UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: VALSARTAN PRODUCTS LIABILITY LITIGATION	**CIVIL ACTION NUMBER: 1:19-md-02875-RBK-JS**
	STATUS CONFERENCE AND ORAL ARGUMENT ON THE TEVA/PLAINTIFFS' TAR DISCOVERY DISPUTE (Via telephone)

Wednesday, November 11, 2020
Commencing at 2:00 p.m.

B E F O R E: **THE HONORABLE JOEL SCHNEIDER, UNITED STATES MAGISTRATE JUDGE**

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(OPEN COURT, November 11, 2020, 2:01 p.m.)

THE COURT: We're on the record in the Valsartan MDL, Docket No. 19-2875. Whoever is not talking, can you please put your phone on mute, because we hear some background noise.

Let's start with the entries of appearance for the plaintiffs, who is likely to talk this afternoon.

Plaintiff?

MS. WHITELEY: Good afternoon, Your Honor, this is Conlee Whiteley on behalf of plaintiffs and Mr. Hart will be joining us shortly.

MR. SLATER: Hello, Your Honor, Adam Slater on behalf of the plaintiffs.

MR. NIGH: Hello, Your Honor, this is Daniel Nigh on behalf of the plaintiffs.

THE COURT: All right. Let's turn to the defendants who is likely to talk.

MR. GOLDBERG: Good afternoon, Your Honor, this is Seth Goldberg from Duane Morris on behalf of the ZHP parties and defendants. And joining me today also will likely be my colleague, Barbara Schwartz and possibly Rebecca Bazan.

MS. LOCKARD: Hi, Judge, it's Victoria Lockard from Greenberg Traurig on behalf of the Teva defendants and the defense executive group. I also have from my firm on, Jeff Greene to address the TAR issues and Dr. Maura Grossman is here in the event we have any questions for her.

MR. TRISCHLER: Good afternoon, Your Honor, this is Clem Trischler representing Mylan Pharmaceuticals and defendants executive committee.

MS. HEINZ: Good afternoon, Your Honor, this is Jessica Heinz on behalf of the Aurobindo defendants.

THE COURT: All right.

MS. JOHNSTON: Good afternoon, Your Honor, Sarah Johnston on behalf of the retailer defendants, CVS and Rite Aid.

THE COURT: Anyone else want to enter their appearances at the moment for the defendants?

All right. We have two main items on the agenda today. One is the letters received from both sides. I'd like to address that first and then to address the oral argument on the TAR issue involving Teva.

A couple of quick points to get them out of the way. One, there was a note in one of the letters that the completion date of the document production fell on a Sunday. Obviously, that was unintended, so we'll make -- we'll make the completion date Monday, which is November 30th.

Second issue is, if we can get it out of the way quickly, if not, we'll deal with it later, the Court received Mylan's letter in effect requesting the same relief that has been ordered for Teva. At least I got the impression from the letter that Mylan and plaintiffs were still conferring about

this issue and there hasn't been a final resolution. As long as the parties are talking, I, of course, have no objection, if we want to stay for the moment Mylan's deadline to produce alleged, quote unquote, nonresponsive documents, it won't affect the normal production, but those documents that Mylan has culled out, that's the subject of this letter application. If Mylan and plaintiffs agree, because they're going to talk about the issue to try and work it out, I have no problem just staying that deadline until those discussions are exhausted. Presumably, that will be in the near future.

Mr. Trischler, do you want to talk to that?

MR. TRISCHLER: Certainly, Your Honor. Thank you. We have -- you've correctly summarized our position in the sense that through the use of technology, we believe the Mylan production has reached the point where continuing the review will not yield any substantially responsive documents, so we've asked for the plaintiffs to consider cutting off the review. We've had ongoing discussions about that, most recently last evening. I thought the discussions were productive and were continuing.

Obviously, Mr. Slater and Mr. Parekh can speak to their view of that, and I'm certainly happy to continue the discussions. I think the one issue that may be standing in the way is, you know, we are in a position, Your Honor, where we believe that the documents from the Mylan collection, which

we believe -- which the computer and the technology suggests to us will be relevant and responsive to plaintiffs' claims will be produced by the November 30 deadline. The so-called null set is what will remain to be decided, as far as what needs to be produced from there, what -- how much of that has to be subject to a linear review, and what we can do to satisfy plaintiff as far as the need to review those materials.

We had proposed extending the deadline for that set for 30 days so that the discussions between the parties can continue and we can reach a satisfactory resolution. I'm not sure that that is necessarily agreeable to plaintiff. I don't want to speak for them, obviously, but I think that's really the issue. I think we have been -- plaintiffs have been very cooperative with us, and, you know, we've tried to be transparent with them as far as how we have conducted the review and how we got to this point and shared material with them and are going to continue to share material with them, so that they can be satisfied that the validation that we've done to make the determination of responsiveness is appropriate, but I think the issue that we face that may not be resolved is one of time, and I'm sure Mr. Slater can speak to that from his side.

THE COURT: I relayed the Court's position. If the parties agree that they're still discussing the issue, the

Court is agreeable to staying the deadline only for Mylan to produce these documents that are culled out. No other deadlines will be treated similar, like we did with Teva, but I just want to hear from plaintiffs.

MR. SLATER: Thank you, Your Honor, Adam Slater. We're obviously starting with the last topic, first. We're very concerned about any extensions of deadlines because we're going to be in a position very soon where we have to start taking depositions. We don't know if there will be any staggering of the different parties, we don't know where that's going to stand, but going on the assumption that we have to start deposing everybody in mid-January, we're obviously concerned about, you know, extensions on these deadlines because that will create major problems for us in our preparations, so we didn't feel that we were in a position at this point to agree to extensions, and also the Court's obviously been very clear about not wanting to extend deadlines for document production, perhaps foreseeing issues like this. So we didn't really feel that it was even in our, you know, that it was even appropriate for us to entertain that.

So I can say now, we have spoken to Mylan, we had -- I can tell you candidly, very different discussions with them than we did with Teva, and we understand Your Honor always wants us to talk and always wants us to try to work things

out. So we are making every effort through discussions. I am not going to say this is easy or that we definitely are going to work something out, because, you know, the deeper into the process and now we're basically at the end, there's -- the validation options are limited. But I can tell the Court that the discussions with Mylan, the reason they're continuing is because their willingness to engage in a level of validation that Teva would never discuss with us has been refreshing and something that made us sit up and take notice so that we at least had to take this very seriously, and again, a blanket no, we're not going to speak to you, we felt was not in line with how Your Honor expects us to conduct ourselves.

So we're talking, we're waiting for information, we're -- we've agreed to continue to discuss this issue with Mylan, but again, the contours of what's being discussed are frankly very, very different than anything that Teva ever discussed with us, or even anything that Teva ultimately allowed to be put into the protocol that was never executed.

So, you know, with that background, Your Honor, we obviously leave to Your Honor what to do, but perhaps the thing to do is for us to continue to talk for about a week and then let Your Honor know where we are, because I think, you know, we can talk through deadlines if that's -- you know, we've heard what Your Honor has stated, you know, taking into account our concerns about getting jammed up at the end of

this process.

THE COURT: That was my inclination as well. I've already expressed the Court's view that it is just distasteful to think that parties are going to spend millions of dollars to review documents that they may be able to show are irrelevant. I don't know if that showing is going to be able to be made, and certainly, plaintiffs have to be satisfied that that showing's made.

It sounds to me like the ball is still in the air with Mylan. It -- the parties may or may not work out a final agreement, but at least until the parties can tell the Court that they've reached an impasse, that the Court's ruling is to stay the deadline, similar like we did with Teva, but the Court has no intention and neither do I think plaintiffs to let this issue linger.

So we'll address it at the next conference at the end of the month, or right before Thanksgiving, I think it is, and certainly no later than the mid-December conference. This issue will have to be put to a head.

So weighing the interests of the parties, I think -- I don't think plaintiffs will be materially prejudiced for the reasons I've already said. We're talking about alleged nonresponsive or irrelevant documents.

This brief extension, we'll know one way or the other which way we're going, certainly within the next two weeks or

four weeks, and weigh that against requiring a party to spend maybe millions of dollars that may not be necessary, weighs in favor of staying that deadline.

So I'm going to enter a order, Mr. Trischler, similar to what we did with Teva. Teva is a little bit different situation because the Court is going to rule on their application and they're going to get an order. Hopefully, you'll be able to work out your situation with plaintiffs.

So this takes care of that issue.

I wanted to address that first because I thought it was one of the more straightforward issues.

So I received Mr. Goldberg's e-mail that there may have been an agreement with plaintiffs, class action plaintiffs. I think it's best that we save that. We'll go down the letter -- and I'll start with Mr. Slater's letter. We'll go down all those issues and when we get to the class action plaintiff document issue, we'll deal with it at that time.

So I have in front of me Mr. Slater's letter. I think a good way to proceed is just go down that letter in order, we'll exhaust those issues, and if there's any issues left, we'll go to Mr. Goldberg's letter and go to that letter as well.

The Court's last order indicated that today was the deadline for the finalization of the fact witness deposition

protocol. We should be able to do that today. I understand the parties still have to work on the addendums which is going to be finalized in, what is it, two weeks.

So I'm on Page 1 of your letter, Mr. Slater. Let's deal with the issues that are left with regard to the deposition protocol, get them addressed and decided and put that to bed.

One thing I didn't say at the outset of this call, just as a general observation, that the Court couldn't be more pleased at the level of cooperation the parties are working on. I said time and time again, I understand the parties can act in complete good faith and still disagree on the issues, and that's fine, but it's nice to see the parties roll up their sleeves to get all these difficult issues done.

So, Mr. Slater, let's start on Page 1 and just go through your letter, and hopefully, get it out of the way.

So the floor is yours.

MR. SLATER: Thank you, Your Honor.

Defense counsel Mr. Goldberg submitted to Your Honor in his letter as an exhibit, the current red line of the deposition protocol, which I guess is our starting point. I think it would be, if Your Honor has that, we can walk through the sections that are still in dispute and probably get this wrapped up very quickly.

THE COURT: Let's do it. I have it right here.

MR. SLATER: Great. So the first section I believe, and Mr. Goldberg, correct me if I'm wrong, is B3 and this section, the red line part addresses -- it's language that defense counsel had wanted to include regarding losartan and irbesartan and Your Honor during the last hearing told the parties to defer that until later in light of the language that's already in there about duplicative questioning, and Your Honor made it clear that this issue would be addressed, and I'm not going to repeat what was on the record.

So our position simply is, Your Honor directed us to defer that so it should not be in this protocol.

MR. GOLDBERG: Your Honor, this is Seth Goldberg. Should I weigh in now or do you want to go to the other issue?

THE COURT: Yeah, let's go one by one, Mr. Goldberg.

MR. GOLDBERG: Okay. Sure. Your Honor, we thought this was important to bring back to the Court's attention, one, because at the last conference, Your Honor, Your Honor did -- did ask the parties, suggest the parties try to work this out, and we've -- we've quoted some of the, you know, language from Your Honor's statements in our letter brief at Page 2, and as Your Honor noted, noted then, this doesn't seem like a very controversial issue. We have witnesses that are going to be deposed pursuant to the Valsartan Master Complaint.

Plaintiffs have not filed Master Complaints yet as to

irbesartan or losartan. Assuming they do, and assuming we get to a point of depositions pursuant to those Master Complaints, it's likely that some of the witnesses that are deposed for Valsartan are going to be deposed again as to irbesartan and losartan, and what we're suggesting is that there be an acknowledgement today, that when we get to that point, that the parties will look at the transcripts of those witnesses who might have been deposed pursuant to Valsartan and who are renoticed for depositions as to the other drugs, and work together to avoid those witnesses having to provide duplicative testimony or testimony on overlapping issues.

It doesn't seem terribly controversial. Your Honor acknowledged that it seems to make sense, and we think it's important to put it into this protocol now, because the likelihood is that in a year or two years, we're going to need to look back at this protocol to see what the parties agreed to with respect to depositions.

THE COURT: The Court doesn't see this as a big issue and has no objection to including this except, Mr. Goldberg, I would suggest making a change to avoid a dispute in the future. I don't think it's intended to limit questioning on overlapping topics. So, for example, if they question a Valsartan witness about the cause of contamination, I don't think the intent is to bar, with respect to, say, a losartan witness to also ask them about what caused the contamination.

I think what this is designed to get at, is to eliminate duplicative and cumulative testimony.

So I would suggest instead of saying -- questioning on topics, issues that overlap, I would suggest saying something to the effect, to avoid duplicative and cumulative questioning, and I think that comports with the parties' intent and I don't see a problem in that being in there.

MR. GOLDBERG: Agreed, Your Honor. We can make that change.

THE COURT: Okay. So that stays in with the change.

MR. SLATER: Then next, Your Honor, Section D. This language we added because there's a lot of language about the reasons why these depositions may need to be postponed or moved. So I thought it was important to have something in here to make it clear to the parties that we're supposed to try to proceed with these depositions.

THE COURT: Is there any objection to, instead of saying best efforts, Mr. Slater, to just saying good faith efforts?

MR. SLATER: Yeah, I have no objection if that's what Your Honor --

THE COURT: Yes, I just --

MR. SLATER: -- prefers.

THE COURT: -- arguments down the road about what best efforts means.

Why don't you just change that to good faith efforts and leave it in there.

MR. SLATER: That's fine. And I could tell Your Honor the reason why we had some concern is because there's been a lot of discussion in our negotiations about, well, what if a defense lawyer or an attorney for any witness needs to be sitting next to the witness and then can't get on a flight or, you know, things like that, where I think we're going to have to, you know, hopefully not have too many issues with that. But I think that language is fine, as long as everybody understands we're supposed to try to proceed if we can.

THE COURT: One way that I'd like -- one thing I like to do, and prefer to do, although it's not done a hundred percent of the time, and you remember from *Benicar*, is that when the parties agree on deposition dates, the Court orders that they be done on a specific date, and it's only with leave of Court can that date be changed and not at the whim of an attorney, and if we do that, I think that that alleviates the concern that you have.

MR. GOLDBERG: Your Honor, this is Seth Goldberg. I would, you know, voice an objection to that, with all due respect, only because of the circumstances we're dealing with with COVID.

I think locking in a date is one thing. I think having a Court order as to that specific date might require us

to come to the Court, you know, at, you know, at a moment's notice. I think we're just concerned that -- the circumstances with COVID, and we've all acknowledged this before, so it's a little bit, you know, a little bit at odds just to say we should have some certainty, because we've all acknowledged the flexibility that we're going to need in light of COVID. And we're talking about global travel where you have different time zones and different restrictions, and I think all of the parties intend to use their good faith efforts.

The good faith efforts language is consistent with what the Court has required in other aspects of discovery here. But I think it would be consistent with the circumstances we're dealing with with respect to COVID.

THE COURT: But I don't think the Court needs to rule on that issue now, Mr. Goldberg. You know, we'll leave that open for a future date, but right now, the Court is not ordering that that be done.

Next issue, Mr. Slater.

MR. SLATER: I believe we go to E3, and I think we're in agreement on this, I think we should just confirm it because we had an e-mail exchange a little earlier that -- with regard to the corporate representatives designated under Rule 30(b)(6), they will be identified within 20 days after the Court enters the order approving the notices, which is

fine with us, and as long as that's going to happen on November 24 or within a day or so after that, because then we'll have the designations by mid-December and we can, you know, know who we're deposing because there's going to be an enormous amount of work we're obviously going to have to do to prepare for these depositions, including over the Christmas and New Year's holidays to get ready to start deposing these witnesses. So you can imagine the organization it will take once we know who the corporate reps are to do that.

So as long as that's the understanding, then we're fine with that language.

MR. GOLDBERG: Your Honor, this is Seth Goldberg. The issue is really that plaintiffs wanted us to be identifying 30(b)(6) witnesses within 20 days of the meet-and-confer process as to the 30(b)(6) notice. We thought that that was a little bit less certain. It's hard to know exactly when a meet-and-confer process ends. And so we suggested timing it as to the Court's approval of the 30(b)(6) notice.

Plaintiffs seem to be in agreement with that. Of course, the Court has said that it intends to rule on the 30(b)(6) notices on the 24th. We just think whatever date that ruling is, that should be the date that triggers the 20 days.

THE COURT: No objection here. So it looks like the

parties have agreement on that.

MR. SLATER: Great. Next is F1, Your Honor.

THE COURT: F1.

MR. SLATER: This has to do with who may be present at the deposition, and we just wanted to -- we added the phrase that who can attend would be subject to space limitations, in the case of an in-person deposition if it ever comes to that, and it was hard to understand why that would be controversial because with this many parties, everybody can't fit in the room, especially if there's still some social distancing at the end of next -- at some point.

I mean, I don't anticipate these depositions really happening in person, but supposing they do with this many parties, you would need to take into account how big the room is and how many seats there are.

MR. GOLDBERG: Your Honor, this is Seth Goldberg.

THE COURT: Yes.

MR. GOLDBERG: I'm sorry, go ahead.

THE COURT: No, go ahead, Mr. Goldberg.

MR. GOLDBERG: Yeah. Your Honor, we -- defendants object to this insertion which, quite frankly, we're surprised to see at the very late stages of the drafting of the protocol, and it seems to be in response to the Court's order two weeks ago clarifying that everybody can attend the depositions. And that we wanted to be sure that defendants

who have the right to attend the deposition are able to do so and our primary concern is that, of course, at some point, we're going to be deposing treating physicians who may want to be deposed in their office, and we want to avoid, you know, avoid any defendant who has the right to attend from being excluded.

That said, as we have discussed throughout this protocol and, you know, the last time we spoke, most defendants are going to exercise discretion as to whether they really need to attend. But we don't want this kind of language to be used to preclude attendance by a defendant who has the right to attend.

THE COURT: This thought occurs to me, Counsel, that there very well may be space issues, but if there are, that does not and should not prevent someone from participating by video, or Zoom, and frankly, it occurs to me that in all likelihood, except for a handful of people, most people are going to wind up participating by video or Zoom or somehow remotely.

So would it make sense to say -- and I have no problem making it clear that even if a person can't attend in person because of space limitations, that shall not limit their right to participate at the deposition by Zoom or video or remotely, if that's their decision. It seems to me that makes a lot of sense. What do you think?

MR. GOLDBERG: I think having an explicit -- and it is stated explicitly elsewhere, that the defendants have the right to attend the deposition.

But I think if plaintiffs would like to have language about the space limitations being in here, that there be some explicit language that says the space limitation should not preclude attendance by some other means.

THE COURT: And I would take it that the plaintiff -- I can't conceive, and I don't think you're going to tell me that the plaintiffs would have any objection if people want to participate remotely, rather than in person.

MR. SLATER: No, of course not. The reality of it is that that's going to have to happen.

THE COURT: Yeah, of course.

MR. SLATER: There's no way around it.

THE COURT: So I think we may have a resolution of this issue. I don't know how to word it, but there may be space limitations that limit the number of people who could participate in person, if they so choose, but that shall not prohibit or bar or limit their right to participate remotely.

So I'm sure you can come up with language to put that in place.

MR. SLATER: That's fine, Your Honor, it's already in here. I think it's already here and nobody would ever object to that. And if somebody is actually a party to the case,

they can have their attorney participate. That has never been an issue. So -- but if they want to -- if the defense wants to propose something, we'll take a look. I can't imagine it's controversial.

THE COURT: I think we have a resolution, then, on that issue, Mr. Goldberg, so maybe you can just wordsmith that one.

MR. GOLDBERG: Will do.

THE COURT: Next, Mr. Slater?

MR. SLATER: G-1, the -- we would like to include a presumptive 75 percent extension of the time for the depositions where there's a translator involved. When you stack everything together, there's just no reasonable number lower than that, and I'm sure we're going to end up running into situations where we're going to have to, on a deposition-by-deposition basis, ask for more time. If there's problems technically or the translators take longer than we think they would in a normal world to do what they need to do, because there's going to be so much decentralization of everybody participating.

So it's hard to imagine that 75 percent would be something the defense would have an issue with. They want 50 percent, which is just not a workable starting point for so many reasons that I think or should be obvious. So we just have to have this placed in here, and then obviously, if

there's an issue, we have a good cause provision built in.

MR. GOLDBERG: Your Honor, this is Seth Goldberg. A couple of things here. First, we put this issue in the addendums because, obviously, the witnesses are going to need the translators at least at this point. We're not aware of witnesses who will need translators that aren't employees of the parties. So we put them in the addendums.

So we did propose 50 percent and we did so because in the case law that we've looked at, most of the cases that we've seen add three hours to a seven-hour deposition, which is actually less than 50 percent, which comes out to 43 percent in these cases, where there's a translator needed.

So we thought that, you know, 50 percent was the right starting point. You're talking about adding -- making a deposition, a seven-hour deposition, a ten-hour deposition.

As we know, these depositions at least initially are going to be done by Zoom and they're going to potentially have to be broken up in some way.

So we thought the best place to start was where the case law seems to be at three hours, or even more at 50 percent, and if it turns out that additional time is needed, we can certainly address that. But we don't think 75 should be presumptive, and, you know, I'm not sure that the issue is really ripe, because I don't know that it should be in this part of the protocol, but to the extent it is, you

know, we think it should be 50 percent and we think there's good support for that in the case law.

MR. SLATER: Your Honor, if I can just briefly respond, please.

THE COURT: Let me just --

MR. SLATER: Okay, go ahead.

THE COURT: The Court has personal experience in having taken defendants' depositions with translators. They are incredibly difficult and incredibly cumbersome, add to the fact that it's a document-intensive case and add to the fact that in all likelihood, the depositions are going to be done by Zoom and video rather than in person. So for that reason, I'm not sure what the case law is, I think 75 percent as a presumption is more than fair.

I would suggest one change and addition to the language that is in this paragraph. It says, "requests for further increases in time," et cetera, et cetera. I think that should say "increases or decreases." There's nothing to prevent the defendants from arguing or plaintiffs for that matter, from arguing that for good cause, they don't need an extra 75 percent, but right now, it just says "increases."

So I would say a 75 percent presumption is very fair under the circumstances and also to make it clear that more than likely, the -- if the defendant has good cause and they want to move to reduce that time, they have the right to do

it.

So that takes care of that issue.

Did you want to add anything, Mr. Slater? I'm sorry, I think I interrupted you.

MR. SLATER: No, I was going to say what you said, about the complexity of the issues in this case and the scientific language, et cetera. So Your Honor was on the issue.

I'm worried about the decreases issue because my guess is everybody is going to be filing applications to ask for a decrease, but we will abide by that and hopefully, it will be pretty smooth.

THE COURT: I don't think that's going to happen. I would be surprised if that happened. But we'll deal with it, or the Court, whoever is dealing with it, will deal with it if it comes up.

Next issue.

MR. SLATER: I believe it's Section G -- let me see. I might have written it wrong in my notes.

THE COURT: I'm on page --

MR. SLATER: Here it is. It should be H-3, I believe on Page 12, exactly. And this is the same issue, that -- this is the provision that talks about suspending a deposition. If there's some sort of a dispute, and because of the logistical issues that are going to have to be overcome to get these

depositions scheduled, we thought that it was important to put in language that would discourage somebody from ending the deposition and suspending it as opposed to just preserving issues if there's a true issue.

MR. GOLDBERG: Your Honor, this is Seth Goldberg. We object to this language. There actually was some more language attached to this that we objected to as well that plaintiffs agreed to take out. Because this, you know, again, it sort of goes back to the best efforts notion. It's imposing upon the parties a standard that is really immeasurable. You know, we're all operating under good faith, but, you know, it's hard to predict what's going to happen in any of these depositions.

Paragraph 3A, which came right from the *Benicar* proposal or protocol seemed to be sufficient for the Court in that case and there really is no reason to believe that any of the counsel are not going to operate in good faith in this, in this case. But to have a last resort standard, I'm not even sure, you know, how that -- if that's ever been used before. But it certainly seems to add some, you know, potential for disputes down the line that are unnecessary.

THE COURT: I agree with the defendants on this one. If the language was satisfactory in *Benicar*, it should be satisfactory here.

I can't think of a situation where a deposition has

been suspended, frankly, I would be shocked if it happens in this case. And why don't we just go with the same language that was very successful in *Benicar*.

So we'll leave it at that.

MR. SLATER: The last one is Section I, Number 1, with regard to the court reporter. We --

MR. GOLDBERG: Adam -- Mr. Slater, sorry to interrupt, I think we have agreement on that. I actually think --

MR. SLATER: Oh, did I miss that?

MR. GOLDBERG: Yeah, I think the version we sent to the Court accepted those edits.

MR. SLATER: Oh, then, that's fine. I thought that it was still red lined.

THE COURT: Is this the issue about the court reporter you're going to use?

MR. GOLDBERG: No. Oh, I'm sorry, that's a different issue. Yeah, that, we still have to talk about. That's not a controversial issue. I think we're just waiting for a proposal from Golkow but we also might want to consider using -- having a second preferred vendor just given the circumstances that, you know, it may be helpful to have another vendor online in case, you know, for some reason Golkow can't manage a deposition.

THE COURT: I think that --

MR. SLATER: Your Honor.

THE COURT: I think that --

MR. SLATER: Your Honor, can I -- I'm sorry.

THE COURT: I said I think that's a wise idea to have a backup.

MR. SLATER: Well, Your Honor, I mean, we could talk about it between the parties. I think that in practice, that would be very, very, it would be virtually unmanageable, because we're going to be having the court reporting company scheduling and managing all of these depositions through people that are going to be assigned to this matter, that the court reporting company will work with counsel for both sides in coordinating. The transcripts will be going into one repository, the exhibit charts will be going into one repository, there will be costs and interaction on updating the exhibit charts. There's going to be confidentiality designations potentially. There's going to be all this going on.

If we now have to start to merge two court reporter companies into this, it will become, I can assure you, very inefficient. I don't think that there's going to be an issue. I mean, this company handled the largest litigation, they handled *Benicar* seamlessly, including all the depositions in Hawaii.

They've committed to me that they're going to make

significant allocations of resources both in terms of people and equipment and whatever is needed.

So, I mean, if we go to another court reporting company, I think it would only be because something happened to Golkow that was some catastrophic situation where they couldn't operate anymore, because -- and because they're going to commit major resources to this litigation.

I mean, we can talk about it more with the defense, and I can tell you that we have -- we got an initial proposal, I went back and asked some questions and asked them to tweak some things and modify some things. They may have gotten back last night. I want to look at it and then I'm going to give that to the defense and talk to them.

I can't imagine it's not going to be acceptable, but I just wanted to get that out, because if the idea is to have two court reporting companies, it's going to become very, very hard to manage.

MR. GOLDBERG: Well, Your Honor, let me try to clarify, or to provide a little clarity here.

THE COURT: Can we leave it -- Mr. Goldberg, it sounds like you and Mr. Slater can work this out, right? I don't know if there's an issue.

MR. GOLDBERG: Yeah, I mean, I do think -- I think we can. I do think having -- I'm not suggesting that we would have two court reporters that would, you know, be able to do

any deposition. Maybe the solution is to have Golkow as the primary court reporter, but the parties haven't agreed upon backup should Golkow not be able to cover a deposition, and that -- we agreed to that backup, we have agreed pricing on that backup. I don't think we want to be doing that midstream.

We haven't seen any of Golkow's pricing, so, you know, yes, we're agreeable in concept, but we certainly need to be able to, you know, have agreeable terms with Golkow.

THE COURT: Mr. Slater, work that out with Mr. Goldberg. It doesn't sound like an issue the Court needs to be involved in.

MR. SLATER: Agreed.

THE COURT: Okay. Are there any other issues?

MR. SLATER: None that I'm aware of.

THE COURT: Great. So get the final protocol to the Court either Friday or Monday so that we can sign it and enter it.

MR. GOLDBERG: Will do, Your Honor.

MR. SLATER: Okay.

THE COURT: Okay. Great. Let's go back to Mr. Slater's letter then, and get to the next issue, and that is on Page 2, 30(b)(6) deposition notices.

MR. SLATER: Yes, Your Honor. This is more, I think, in its current posture and update as opposed to we're not

requesting any rulings from Your Honor.

I've been in contact with counsel for Torrent, Aurobindo, and Hetero regarding our meet and confer last week. I promised in my letter to submit the current draft that was sent to them after our meet and confer which hopefully answered most or all of their issues or questions. We're going to be speaking with each of them this week and we'll have this finalized hopefully, you know, very shortly.

As to the other parties, we're in the midst of scheduling an initial meet and confer with Teva and we spoke with ZHP last week. That call was far more complex. I'll use the word "complex" than the discussions would be the entities for which we've provided the revised versions, and we're proceeding on the basis of each defendant negotiating a separate protocol.

That was what we were told during the initial meet and confer with the preference and in the conversations, it's turned out that's fine, and it's working fine. We had some concerns, but it's working fine. Presumably, we will speak with Mylan as well, and our expectation is that, as we discussed earlier, that these protocols will be done and ready to go to the Court no later than November 24. And what I would suggest is, to the extent we can finalize for the parties as we go forward between now and then, you know, perhaps we could submit them as we go so that we can lighten

the load November 24, which is going to probably be a pretty heavy conference as well.

THE COURT: It's perfectly acceptable to the Court. Any objection, Mr. --

MS. LOCKARD: Your Honor, it's Victoria Lockard. I just want to address a couple of points here and I agree with Mr. Slater that, you know, I don't think that we expect the Court needs to make any rulings at this time. Mr. Slater and I have been e-mailing about trying to find a time to meet and confer and we just haven't been able to mesh our schedules on that yet, but I'm confident we'll be able to reach some sort of a proposal for Teva.

But a couple of clarifications. We just want to make sure the Court is aware of and get out for the record. At the last conference the beginning of October, the Court issued a ruling on October 2nd that directed plaintiffs to promptly identify the person who would be primarily responsible for the meet and confers with each defendant.

They haven't done that. Maybe that's Mr. Slater, and if so, that's fine, but we need to know, you know, who is going to be responsible, and on an ongoing basis for scheduling and coordinating those depositions. We're getting to a point in time where the Court will expect us to start scheduling these and we've discussed this previously.

We've asked for some indication and transparency as

to how these will unfold. We have quite a number of witnesses for each defendant, quite a number of defendants and, you know, it's getting to the time where plaintiffs need to identify where they intend to start up with these, which defendants, which manufacturers, which case.

We have witnesses we're meeting with and at this point, we haven't been able to give them any idea in terms of when we think their depositions will take place, and it's starting to become an issue for us with our clients. We need to start honing in on this.

The other point that I want to make sure we're clear on, is that as we complete these meet and confers and submit these topics in finalized form, the defendants are operating with the intent that these will be the finite set of topics and absent good faith, we're not going to see, you know, a rotating wheel of expansion and additional topics coming in.

Again, you know, certainly they will, you know, they'll be entitled to their -- there's a good faith reason for some new topic that could not have been foreseen. But we need to know that these are the world of topics so we can put the right witnesses up, identify any overlapping issues and get the depositions done in an orderly and efficient fashion. I don't think that's disputed, but I want to make sure that's clear.

The same goes for the fact witnesses. You know,

plaintiffs need to hone in on this. We've had discussions and meet and confers, each of the manufacturers, certainly I know Teva did, to talk about those priority witnesses that were identified for our fact witness, personal knowledge depositions.

And, you know, for Teva, for example, we have 11 individuals. You know, given the number of topics that will be covered in the 30(b)(6) deposition, we do not believe that all 11 need to be deposed. There's significant overlap above those witnesses with personal knowledge, and we need to start narrowing those and reach an agreement because we need to get those confirmed before we go forward with those six so that we can get those -- we need to start narrowing the list of personal knowledge fact witnesses, we need to get to an agreement on those as part of these meet-and-confer processes, and know who those, the world of those witnesses will be before we ever start scheduling 30(b)(6) because many of those may be overlapping, and we will need to schedule their fact witness depositions consecutively with the 30(b)(6).

MR. SLATER: Should I respond to that, Judge, or --

THE COURT: Well, I --

MR. SLATER: Because there's a lot -- to appreciate.

THE COURT: From my perspective, I'm trying to get on to Pacer to look at the order Ms. Lockard referred to. I recall the order, but I think there might have been some

additional language in the order about the deadline to identify someone who's the point person in concept.

I can't get access on my iPad here. We're having problems with it.

MR. SLATER: Judge, I can save you the trouble. We already did, and, you know, I guess I need to address what counsel -- it's unfortunate, but let me just have a moment.

Number 1, we haven't spoken to Teva yet, so it would be appreciated if before they would start to rattle off a list of demands, they would actually have a conversation with us first.

Number 2, we did designate who it is. We told them who's going to be on the call, myself, Daniel Nigh and David Stanoch. That's the team that's approaching it. It will likely be Mr. Stanoch that will be the contact for the Teva depositions going forward, and it was a -- you directed us to appoint somebody as a representative for each defendant, or taking each defendant for coordination of the depositions and the scheduling, which we're going to do, and that's -- the people that are on these calls are going to be the point people along with potentially some other people since it may be a job that's too large for one person to do. So that's being done.

So counsel just simply had to ask the question and we would have answered and said, this is our intent.

Next thing, when the depositions are going to commence. It's astounding that counsel would jump on this call and say, why haven't the plaintiffs scheduled the depositions and told us who they are deposing. We don't even know who their 30(b)(6) witnesses are going to be. We haven't finished discussing the logistics of who is where and when they can be deposed, you know, in the United States versus other locations. So I'm just surprised at that coming up, because it's obviously premature.

As far as whether we can serve more 30(b)(6) notices, counsel recognized for good cause, we can in the future. As we get more information, if we believe there's a need, we intend to serve an additional notice. If it's inappropriate, Your Honor will strike it. I mean, that's what we would expect to do.

So the process of narrowing the list of individual witnesses is addressed in the next section, but that's a process that's not over yet, because it's going to presuppose, and again, in the meet and confers with the parties we've spoken with, and in particular, Hetero, Aurobindo, and Torrent, we have very positive conversation about the concept of matching up the corporate reps with the individual witnesses and scheduling around that and frankly, we discussed that with ZHP also. If we still need to figure out who and where and they have really more logistical issues, perhaps

than some of the other parties, but that's been discussed there. So that's our intent.

So again, I think I would appreciate in the future having the opportunity to talk to counsel about their concerns before they air them on a call with Your Honor.

MS. LOCKARD: Your Honor, this issue was set forth in Mr. Goldberg's letter about identifying who would be responsible, and the reason that I raised it is because we did have a meet and confer with plaintiffs. I spoke with Marlene Goldenberg and Layne Hilton about the fact witnesses and the fact witness depositions.

And so our request is, we need to be orchestrating this and not, you know, having one conversation with one set of lawyers about the corporate fact witnesses and another conversation about the 30(b)(6) and try to get it more orchestrated. I mean, this is not a major issue for the Court to rule on, but I think it could be handled a little more efficiently and, you know, we'll make efforts to try to do so.

THE COURT: Okay. So I think the takeaway is that certainly, this is an important issue and the parties are going to be meeting and conferring in earnest over the next few weeks about these issues, and if there's any issues that the parties can't work out, that's what we're here for and we'll work them out. All right.

So I think the topic -- we talked about the 30(b)(6)

issue, Mr. Slater, I think we're done with that.

The goal is to finalize those dep notices by the 24th. We'll leave the dates blank, but at least we'll deal with the objections to the notice.

I think we're now on the topic on Page 3, meet and confers on defendant employee deponents. Is there anything to say about this, other than the parties are going to be meeting and conferring in earnest about this over the next few weeks to start identifying individual dates and locations?

MR. SLATER: I don't think there's anything else to discuss, Your Honor. We're continuing the conversations with the party -- with the defendants and -- and I don't think there's anything to add to it.

THE COURT: All right. Let's get then to a big substantive issue, the issue of these third-party subpoenas.

In the first instance, we have these two motions that were filed. I received the affidavits and read them. That's fine. Why don't we start with the two motions and I guess we have to tee up those issues because a lot of those issues seem to overlap with -- I would think with subpoenas directed to other defendants.

So I'm not going to decide the issue on this phone call. I just want to discuss the mechanics of how we're going to deal with the issue. It sounds like at least the parties have filed their motions, have filed meet and -- you know,

have attempted to resolve it. They couldn't resolve it.

Plaintiffs, you tell me, when do you want to respond to those motions? I realize there's a lot on our plate. I don't think this is an issue that we have to decide right away. Certainly, I believe it's more important to work on the deposition scheduling and finish the document production.

So you tell me, what's a reasonable date to respond to it and following that, we'll have argument on it.

MR. SLATER: I'll defer this to Marlene Goldenberg from our team who is spearheading this issue, Your Honor.

Who is perhaps muted.

In order to move things along, I haven't personally seen the motion. If anybody wants to overrule me on the plaintiffs' side, I would think we could respond within seven days. One of the concerns, Your Honor, is to the extent that documents going to be obtained, we need those documents before we depose witnesses.

THE COURT: Let's circle back. Let's circle back to that, Mr. Slater, because there's some substantive issues we have to deal with, and we'll circle back on when to respond to the motions.

For example, on Page 4 of your letter, you raised the issue whether the defendants have to accept service for certain foreign entities. I would, you know, of course, if the defendants agree, that's great. I'm not sure that's going

to happen in every instance.

Isn't the only way to tee up that issue is by a motion?

MR. SLATER: I certainly don't think so. We're just dealing with the motions that were filed, and obviously, Your Honor gets the flip side to that issue, which is whether or not the defendant would have possession, custody, or control, because of the relationship with the entities is such that they could get the documents from the other entity, whether they're technically accepting service of the subpoena or not.

THE COURT: Well, I'll be quite frank. I read the motions, but it's been a few weeks. I don't remember that this issue was teed up in the motion, because it was a motion for protective order by the defendant. It wasn't a motion to compel.

MR. SLATER: Your Honor, I'm agreeing with you that this doesn't have to be decided today. I mean, that -- just -- I don't want to miss -- I don't want to confuse, you know, where we're going with this. I agree I think with adding that, and I think you're right, that it may be that it's something that needs to be teed up in two weeks. It probably makes a lot of sense.

THE COURT: All right.

MR. GOLDBERG: Your Honor --

THE COURT: Go ahead. Is that Mr. Goldberg?

MR. GOLDBERG: Yeah. Your Honor, this is Seth Goldberg, and I also want to invite any of the defendant counsel to raise -- to jump in here. There are a few different things going on here.

The defendants or plaintiffs served all of these deposition notice -- the subpoenas. Leaving aside for a moment the argument that the notice was improper, which we think it was, and it was improper as to every of the subpoenas, you know, as to every defendant, you've got a few of the defendants who have filed a motion to -- for a protective order.

Mylan has filed objections to these subpoenas. A few of the defendants have made their arguments in their submission to the Court, ZHP being one of them, and it seems like they're, you know, that the parties can use -- if the Court is going to want to hear these issues in a few weeks, some organization as to all of the parties, all of the defendants, because we all have similar issues to raise as to the subpoenas. We've set those issues out in our letter, issues about the scope of the subpoenas, issues that they go beyond the Court's macro discovery order, that they seek information that is not relevant to the case.

And this issue about -- that came up for the first time, that we are somehow in possession, custody, and control of documents in these third-party's hands, that is a new issue

which hasn't been addressed, but it certainly is not -- it's certainly not accurate to say as to most if not all of these third-party subpoenas, which are directed at, you know, vendors and suppliers of companies through commercial contracts, not agents of -- of the defendants.

So I just would note for Your Honor that you have got each of the defendants wants to preserve their objections, has gone about it in a different way because you are generally trying to figure out how to do this. We've all met and conferred with the plaintiffs. The plaintiffs have uniformly refused to withdraw any of the subpoenas, uniformly refused to narrow the scope of any of the subpoenas, and then -- so the organization as to how the defendants can preserve their objections and raise their issues, but it's important for the Court to also keep in mind, the third parties themselves, of course, have a right to respond to the subpoenas with objections, with motions to quash.

They're not -- they're not represented by these arguments and these letter briefs. For all of them, their dates to respond have not even -- are not ripe yet.

So I think most of the response dates would be November 15th, as to the third parties for ZHP, the response dates have been agreed to be moved out to November 30th.

But I just wanted to raise that for Your Honor if Your Honor is not inclined to go through the specific

arguments today, that having some organization as to the defendants' responses and then also keeping in mind that the third parties themselves may have responses as well.

THE COURT: I think you are a hundred percent right, Mr. Goldberg, to try and get some organization to this. I don't even know, for example, how many third-party subpoenas have been served. Does anyone know?

MR. GOLDBERG: Approximately 60.

THE COURT: Okay. So let's assume we live in a perfect world, and we don't. The ideal thing would be, if the defendants who have an interest in those third-party subpoenas could get together and file one omnibus motion about issues that overlap on every single subpoena, you know, whether it's service, timeliness, irrelevance, irrelevancy to common topics, and then if each individual defendant who has their own specific issues that don't overlap with the others, somehow they raise those issues, we'll get plaintiffs' response, but, listen, I've always said we live in the real world.

It's unquestionably the case that we're going to get some motions for protective order from some of those third parties. And the ideal thing would be if we could address everyone's issues at the same time. I just think it's impractical to do it in a week or two.

Mr. Goldberg, do you think the defendants who have an

interest in these subpoenas could possibly get together and file one? You know, we don't need a long brief, the issues have already been briefed, but sort of identify the issues that overlap every subpoena, we could decide those, and then if there's specific issues to a particular, we could deal with those, and then somehow we'll have to coordinate with that, with likely objections and motions from the third parties themselves.

MR. GOLDBERG: I think that makes a lot of sense, Your Honor. I would suggest that given that, you know, we've gotten the 30(b)(6) issues to resolve by the 24th, all of the defendants are meeting their document production deadline by November 30th, I believe, that, you know, if we could put this on a, you know, early December schedule for us to get you that, that brief, you know, that would allow us to clear out some of the other stuff and at the same time, we'll know if some of the third parties themselves have filed objections or other documents.

THE COURT: Mr. Slater, I recognize plaintiffs' interests in trying to get these documents as soon as possible, but I think we ought not to forsake efficiency and reasonableness for, you know, a timeliness concern.

What's the outside date for the third parties to respond to these to take -- because they wanted to file a motion for protective order, the third parties, what's the

outside date when they have to file it by?

MR. SLATER: Your Honor, I'm happy to report that Ms. Goldenberg is back on the line, so I'm going to hand back off to somebody who actually knows what they're talking about.

(Laughter.)

MS. GOLDENBERG: Hi, Your Honor, I apologize. I had gotten cut off earlier.

Just to back up a little bit. We have, just in the spirit of transparency, gotten documents from some third parties and those should be produced shortly for the defendants if they haven't gotten them already, but we're also working out some issues with the defendants where they have privacy and protection concerns with one another.

So we will get those to them, and I don't believe that anyone has produced documents, so far as an entity that the defendants have raised major concerns with. Obviously, you know, we'll do our best to make sure that we facilitate document production within the scope of whatever schedule or order is contemplated by the Court, but sometimes these entities just send us documents without any response beforehand.

So we will do our best to reach out to them and to make sure that we have a full understanding from each defendant of where there are disputes at issue.

THE COURT: Can I jump in here? Can I jump in here

for a moment, Ms. Goldenberg?

MS. GOLDENBERG: Sure.

THE COURT: It just seems fair that if you get documents from a party that object to one of the protective order motions that have already been filed, it just seems fair that you segregate those, don't look at them until the motion is decided.

So if you happen to get those documents, could you not look at them, put them aside, notify the other side, because they are subject to a motion that's already been filed with the Court.

MS. GOLDENBERG: We can do that, Your Honor, and the best of my memory, none of the entities that have produced documents, but I think at this point, it's like one or two have been entities that have been the subject of those motions, but we'll double-check on that and we'll be happy to quarantine those documents in the meantime.

THE COURT: Okay. Great. It just seems like an appropriate reasonable thing to do.

Okay. So I think the question we were dealing with, Ms. Goldenberg, is, what do you think is the -- if a third party was going to file a motion for a protective order, what's the outside date they have to do that?

MS. GOLDENBERG: I am trying to pull up one of those documents as we speak, Your Honor, but I believe that that

date is -- let's see. I believe that that date was today. I have just -- and that date is a little bit of a moving target for some entities because some have requested extensions and we've granted them. I'm sorry, it's the 15th. So we're almost there.

That was the date in the subpoena to respond. And then, of course, some entities have responded that they want to meet and confer and we are engaging in those meet-and-confer efforts right now and have given extensions for some to respond to those.

THE COURT: Okay. What about setting a date, that if any third party is going to file for a motion for protective order, they have to file it by a date certain, or somehow get notice to those parties, and that will be the same date that the defendants file, one, their omnibus motion dealing with overlapping issues and then specific issues because then we'll have before the Court all the objections, plaintiffs can respond and then the issue can be teed up and decided.

One, I don't know we have time to decide this issue in the next week or two, and, two, we won't have all the objections before the Court within a week or two.

MS. GOLDENBERG: We can certainly communicate that date to the entities. We, of course, haven't, you know, gotten confirmation from all of them that any of them -- or, you know, from attorneys representing them, but we'll

certainly do our best to send that notice out at least to the address where the subpoena was served if we haven't heard back yet.

THE COURT: All right. Why don't we do this. I'm looking at my calendar and I agree with Mr. Goldberg, that I think the parties' resources in the short term should be spent on the issues that you're already working on, so that we can get these depositions up and running in time.

Those seem to be more important than these third-party issues, although, obviously, these are important, too. So why don't we say, by December 4, anybody and everybody who's going to file a motion for protective order regarding the subpoenas, has to file it. Third party and defendant, okay? And then plaintiff will respond to that.

Ms. Goldenberg, you're probably going to be the person who responds. How much time do you want to respond?

MS. GOLDENBERG: I think 14 days for the one filed by the defendants and then hopefully, there won't be too many motions for protective orders and that we will have worked through most of the issues on the third parties.

So if we could say two weeks -- or 14 days for now, just knowing that if there happen to be many, many, many of these, we may need an extension at that time. If that's all right.

THE COURT: How about this, Ms. Goldenberg. How

about respond by December 31st, and then defendants can reply by January 8th, and we'll put this on the agenda for the January 13th call.

MS. LOCKARD: Your Honor, it's Victoria Lockard for the Teva defendants. Can we also request, in addition to having plaintiffs notify the defendants when they receive documents and providing those documents, that they also provide us with any objections or responses they receive and communications about extensions? There are these discussions happening, we don't have transparency into them. I would think it may be most efficient, you know, if there are meet and confers going on that we would want to be included in those, or at least know where the objections are being lodged, and we're not seeing any of that.

THE COURT: That sounds like a reasonable request, Ms. Goldenberg, doesn't it?

MS. GOLDENBERG: We're happy to provide them notice of the objections and when we receive responses. I think just from a pure standing standpoint, you know, these third parties do have -- make different objections than what the defendants do. I don't know that the defendants really should have any input into the documents that we're seeking outside of, you know, the objections that they are permitted to make under the rules.

So I would submit that I don't think they need to be

on the meet-and-confer calls, but I'll defer to Your Honor.

THE COURT: No, no, I don't think that's what Ms. Lockard asked for. I think you're right, they probably don't have, without an agreement of counsel, to participate on your separate meet and confers. They just want to know if objections have been filed and requests for extensions and response dates have been set with regard to the third-party subpoenas that they have an interest in.

That doesn't sound unreasonable. I didn't hear Ms. Lockard say that she wanted to participate in your discussions with the third parties.

MS. GOLDENBERG: If that's the way you understood it, Your Honor, I'm more than happy to do all the things that you just mentioned.

THE COURT: Okay. I'm right about that, right, Ms. Lockard?

MS. LOCKARD: Well, certainly if plaintiffs were agreeable, we would participate. If plaintiffs are going to raise a standing objection to that, then, you know, I understand there may be, you know, some legitimacy to that, but we would at least want to know that those were taking place.

THE COURT: Okay. And you very well, "you" being defendants, may want to coordinate with the third parties.

MS. GOLDENBERG: Correct.

MR. GOLDBERG: Your Honor, this is Seth Goldberg. Could you just clarify again or just give us your understanding of what would happen with documents that plaintiffs receive between -- from third parties between now and when, you know, the objections are ruled on?

THE COURT: Well, if they received -- the easy case, Mr. Goldberg, would be, if they received documents from a third party associated with one of the parties that already filed a motion for a protective order, that's easy.

In Ms. Goldenberg's words, those documents are going to be quarantined. Plaintiffs aren't going to look at them until the Court rules.

I guess the harder question is, suppose a package comes in the mail tomorrow with documents but a motion for protective order hasn't yet been filed regarding those documents, and I suppose there's nothing to prevent plaintiffs from looking at those. Right?

MR. GOLDBERG: Well, I think, Your Honor, that's what I was trying to, you know, figure out, because, you know, I think part of what we did in our letter, and it is the result of meet and confers, we've had at least three meet and confers with plaintiffs about the third-party subpoenas they served, and we, we did not, I think only two of the defendants filed a, quote, motion for a protective order. I think ZHP raised these issues by way of the motion, by way of the letter brief,

Your Honor, yesterday.

Mylan has raised these issues by way of an objection. But I think at bottom, all of the defendants object to whether these subpoenas were properly served and then there are objections as to all of the subpoenas in terms of scope, in terms of the macro discovery order and relevance.

So it may be the case that plaintiffs get in, over the next week or two, documents that we would argue should not have been provided, because they are outside of the macro discovery order or because that subpoena was not properly served and --

THE COURT: Well, what do you suggest?

MR. GOLDBERG: Well, we would propose that those documents also be quarantined until the Court resolves these issues.

THE COURT: Ms. Goldenberg, let's hear from you. What happens to the situation where you get an envelope tomorrow with documents? They're covered in part by the motions that have already been filed, and it's likely that by the December 4 deadline, additional motions are going to be filed relevant to those documents.

MS. GOLDENBERG: So I think, you know, this is creating a large gray area for us, and just for the sake of clarity, you know, I think it might be helpful if -- to me, there's a difference between a defendant saying, you know,

there are some categories here that seem overly broad and some saying, you shouldn't get documents from this entity at all.

If there are just going to be smaller objections that, you know, we could maybe work through, I don't think we should be prevented from seeing those documents.

If a defendant says, look, this entity has obviously nothing to do with Valsartan whatsoever, and the entity happens to, you know, to send us documents in the meantime, that they've told us -- and the defendant has said, you shouldn't get these documents at all.

I guess pursuant to what we've just been talking about, maybe those should be quarantined, but if we got documents from someone like Novartis, where if, you know, during the meet and confer with ZHP, they had said to us, you know, we can recognize the relevance of this entity, or why you want documents from them, I don't think that we should have to wait to look at those documents because they are going to be really relevant to the depositions we need to be starting to take at the beginning of January.

THE COURT: Well, here's what I think, because I'm a big fan of efficiency and reasonableness. I think it would make sense that all the documents that you receive, you have to give the defendants notice of what you receive, but until the Court rules on these third-party subpoenas, plaintiffs should be barred from looking at the documents, because we

don't know right now whether they're going to be objectionable or not.

Can I see privileged information in there? There might be irrelevant information in there, there might be information that the Court already ordered is not subject to discovery. I don't know how we can segregate the different mailings you receive, and it's impractical to do it on an envelope-by-envelope basis.

So I think the appropriate thing to do is to order that all documents received via the subpoena should be held, and not reviewed until the Court rules on the subpoenas, but the defendants, of course, have to be given notice that those documents or said envelope was received.

And I'll make a note of that and that will be in the Court order. I just think that's the simplest and clearest way to proceed. Again, I don't think plaintiffs are going to be prejudiced. We all have more than enough work to do before January 13th, that you don't have to worry about reviewing these third-party subpoena documents. Okay. So that takes care of that.

So we'll have a briefing schedule for all objections, parties and nonparties, we'll hear everything on January 13th, and until then, plaintiffs are just going to hold anything they happen to receive, and Ms. Goldenberg, this helps you because you can tell the parties who call you for extensions,

that you'd love to give them extensions but the Court ordered that everybody has to file objections by December 4th. So that protects you and gives you some cover.

All right. I think that takes care of the third-party subpoena issue.

Requests and depositions as to the medical monitoring. Plaintiffs, I'm on Page 8 of your letter. Boy, in an hour-and-a-half, we've done eight pages of your letter, Mr. Slater. We're just moving along here.

MR. SLATER: I take full responsibility for that, Your Honor, if it helps.

(Laughter.)

THE COURT: What's the issue with regard to the medical -- oh, here's my thoughts about the medical monitoring plaintiffs. I know plaintiffs have asked to put those issues on ice a little bit. Here's my thinking on that.

Judge Kugler had indicated to everyone that by the end of this month, he's going to give them more clarification on how he's going to proceed on the case. I don't know what he's going to say, but maybe we should defer the medical monitoring plaintiff issue until November 24, because if after -- because I'm thinking Judge Kugler's plan to proceed forward might impact how soon or how much later we need to get information from the medical monitoring plaintiffs.

So I would suggest deferring this until November 24.

Any objection?

MS. BAZAN: Your Honor, this is Rebecca Bazan from Duane Morris for the defendants. The parties have now reached agreement as to the document request to be served on the medical monitoring class representatives. So since the document requests are agreed to and finalized, we don't see any reason why they should not proceed the same way as the document requests to the economic lost individual class representative. There is no reason to wait, there is no longer a dispute, or anything to talk about in terms of the document requests themselves.

In terms of the depositions of the medical monitoring class representative, Your Honor's order was very clear that the depositions of all of the class action plaintiffs have to start January 18th and must be completed by March 26th.

It did not carve out any exception for medical monitoring class representatives. When defendants requested an extension of this deadline, Your Honor was very clear, that in order to keep this case moving, there would be -- there would be no extension of these deadlines. And finally, you know, Judge Kugler has indicated, and indicated at the end of September, that the general causation issues would proceed along the parallel track as to the economic loss issues. So defendants think there is no reason to put the medical monitoring class representative depos on a separate track.

THE COURT: Let's hear from the plaintiffs. I did not know about the agreement on the documents. Thank you for informing the Court.

Plaintiffs, you want to be heard? Defendants' position is, there should be no change in the current schedule.

MR. STANOCH: Good afternoon, Your Honor, David Stanoch for plaintiffs. I agree that this morning we reached agreement on the Rule 34 document requests, the medical monitoring plaintiffs. If we want those to be entered and responded on the same timeframe as the other ones that the parties have agreed upon in which Mr. Goldenberg -- Goldberg I believe e-mailed you about, that's fine, there's no harm in doing that.

The more practical issue, Your Honor, is whether we're doubling the number of depositions we need to schedule in the January 18th to March 26th window, which Your Honor set.

And the order that set that window, while it did refer to class plaintiffs, frankly, Judge, the whole conversation and the depositions only came up from the prior order and the prior CMC, where all the talk was about economic loss plaintiffs, because those are the only requests that defendants had said they want to propound, and it wasn't until last week that they even told us, or less than a week ago,

that they want to serve document requests on the medical monitoring plaintiffs, after we asked them multiple times dating back to October 16th.

So we would say that the document requests could be approved and we'll answer them, that's fine. But if we're going to wait to hear from Judge Kugler on the depositions, the deposition of these folks can be staggered slightly from the existing January 18th and March 26th window, to trail a little bit based on what Judge Kugler will let us know at the end of the month.

THE COURT: Well, I have to say that defendants' argument was very persuasive.

Counsel reminded the Court that we set that deadline. There was absolutely no question in the Court's mind that when it set the deadline for the class action plaintiffs, it was not only talking about the economic class plaintiffs, it was talking also about the medical monitoring plaintiffs. Really, that should not be debatable.

So we're going to keep the current schedule. That's the default setting. If things radically change because of what Judge Kugler tells us on November 24th, Mr. Stanoch, the Court will hear you. But as of now, let's stay with the current schedule.

MR. STANOCH: Very good, Judge.

THE COURT: Next issue. Wholesaler document

productions. Page 11.

MR. STANOCH: Yes, Your Honor, David Stanoch again for plaintiffs. Just to be brief and to round out Mr. Slater's letter. I believe Your Honor's order of I believe July 16th, 2020, set an October 13th deadline. It was actually an extension of a deadline for downstream defendants, wholesalers, and retailers to complete their productions to plaintiffs' document requests. In following up with the defendants, it appears that Cardinal -- two of the three wholesalers claim they produced -- they've completed their productions, but for a supplemental data, which is by agreement okay with us, and we're reviewing those productions now.

But in the meantime, McKesson has suggested that they've not fully completed their production. Our view is it should have been completed, they should be ordered to do so promptly.

MS. DAVIS: Yes, Your Honor, D'Lesli Davis for McKesson.

So, Your Honor, just to give some perspective here, McKesson has produced 2,000 pages of documents and about two million rows of the sales and purchase data, line-by-line items that the Court ordered. We've covered some purchase and sales histories, SOPs, document retention, inventory with regard to recalls, recall VCDs return, recall employees,

distribution center indemnification agreements and information, but we've been candid with the plaintiffs that we're encountering some trouble figuring out where SOPs go when they die.

There are some old SOPs we can't find, and additionally, with regard to some of the hard copy exemplars on shipping documents, it appears that since those VCDs for Valsartan-containing drugs, NDCs, for National Drug Codes, I apologize.

And we're seeing that some of these hard copy documents that are old, are off-site, and it's looking like maybe stored by date rather than National Drug Code number.

So we're trying to pour through that date and get exemplars that are correct and that are a complete set, and just taking a little bit longer than we wanted it to, but we're asking in good faith and we're being candid with the plaintiffs about it, Your Honor. So we would ask that the Court and the plaintiffs indulge us just a little bit longer as we try to close the loop.

THE COURT: Counsel, when are you going to finally complete the production?

MS. DAVIS: I'm hoping within 30 days we have all of that, Your Honor.

THE COURT: Counsel, that's not good enough. That is not good enough. Everyone in this case is burning the

midnight oil to meet these deadlines. A company of the size and sophistication and resources of McKesson should be able to comply with Court orders.

Now, I heard plaintiff say, and you can correct him if he's wrong, that these documents were due October 13th. Is that right?

MS. DAVIS: I think that was the expectation by all, yes, Your Honor.

THE COURT: So that means, I don't know offhand, that means that if the deadline to produce the document was October 13th, more than likely, correct me if I'm wrong, the order requiring their production was entered months before.

So McKesson apparently had plenty of time to get to the bottom of this.

I'll tell you what I'm going to do. I'm going to order McKesson to produce all responsive documents in two weeks. And just tell your client, if they have to put more resources on it, to do it. They've had enough time to do it. It's not an unsophisticated party. Everyone is rolling up their sleeves to get things done, and that has to include McKesson. So --

MS. DAVIS: We understand, Your Honor, we'll try to accomplish that, and to the extent that things do not appear to exist, we'll just -- we'll just make that clear.

THE COURT: Okay. All right. So what else,

Mr. Stanoch, with regard to the wholesalers?

MR. STANOCH: Thank you. Mr. Stanoch again, Your Honor. Thank you. And there's no other issue I think ripe with the wholesalers. We did -- in our letter, did just make Your Honor aware that there was a substantive written objection that all three wholesalers raised to two of the Court-approved, argued and long negotiated document requests which was very troubling to us, given the amount of resources the parties and the effort to put -- and the Court, put into coming up with the ultimately Court-approved requests that -- and then the first time we heard it was in the written objection.

That said, we had a meet-and-confer call last week and we're committed to working in good faith to address it, if there's some workaround or compromise we can come up to. But we did want to put that on Your Honor's radar in case it comes up at the next CMC and we can't reach an informal resolution.

THE COURT: Fair enough. Terrific.

Mr. Goldberg, let's turn to your letter. Are there any issues in your letter that we did not address thus far, and if so, let's address them.

MR. GOLDBERG: Sure, Your Honor, thank you. I think the only issue that we haven't covered is the Rule 34 document requests that defendants served or proposed to serve on the consumer class representatives and the TPPs. All right.

I e-mailed you earlier today copying Mr. Stanoch and counsel for the TPPs, with the four sets of document requests that the parties have agreed to.

And, one, that the consumers will respond to the requests that we -- that the Court will approve as to them, the medical monitoring plaintiffs will respond to document requests as to them, and Maine Automobile Dealers Association and MSP will respond to document requests as to them. With respect to MSP, at this point, the parties have agreed that three of the assignors, the three assignors that responded to the plaintiff fact sheets will respond to the document requests.

Defendants and MSP are still trying to reach agreement as to the responses to those document requests by other MSP assignors, and we'd ask that Your Honor give the parties a few more days to see if we can reach an agreement and to report to Your Honor about that on November 16th.

THE COURT: No problem, Mr. Goldberg, I'm happy to let the parties talk about it. If it can't be resolved before -- I think our next call is the 24th or the 23rd or somewhere around that, but if it can't be resolved before then, we'll finalize it at that date. But --

MR. GOLDBERG: Sounds good.

THE COURT: But the parties are talking. That's great with the Court. Perfectly fine.

MR. GOLDBERG: Thank you, Your Honor. I think that is -- that does it for defendants' letter.

THE COURT: Okay. Great.

So I know we have the TAR issue. We'll talk about that. But putting that aside for the moment, are there any other issues that either side wants to talk about while we're all together?

MR. GOLDBERG: I don't believe there are any for defendants, Your Honor.

THE COURT: Mr. Slater, anything else?

MR. SLATER: Nothing for plaintiffs, Your Honor.

THE COURT: Okay. So now we can turn to the Teva oral argument issue. Can I make the suggestion, if no one has a strong objection, let's take a short break, it's 3:45 now. We could convene back at 4 o'clock and then we'll hold oral argument on the Teva TAR issue.

Karen, are you available to come back?

THE COURT REPORTER: Yes, Judge.

THE COURT: So why don't we do that. Why don't we take a short break, 15-minute break. Come back at 4 o'clock and then we'll address the TAR discovery dispute. All right? So we'll sign back in in 15 minutes and in the meantime, we're adjourned.

(Recess.)

THE COURT: Good afternoon, everyone, this is Judge

Schneider again.

MR. GOLDBERG: Good afternoon, Your Honor. This is Seth Goldberg.

THE COURT: Karen, are you there?

THE COURT REPORTER: Yes, Judge, I'm here.

THE COURT: Let's just wait one moment, people seem to be buzzing in.

Okay. We're back on the record, Karen, if that's okay.

We're now going to turn to the portion of the conference call where we address the Teva TAR issue. Just to let counsel know, the Court's not going to rule today on this issue. There are a number of questions that I have regarding the background and that I'd like to get answers to and then, you know, make sure I get all the case law that's available, and you'll get the Court's ruling promptly.

As I stated before, I don't think not having an immediate ruling is going to materially prejudice anyone. We have a lot of issues we're dealing with to get ready for the upcoming depositions, and that's fine.

This issue that we're dealing with now will be decided promptly and there will not be an undue delay, but you just won't get a ruling today.

The Court has read all the papers and is very familiar with the issue, having lived with the parties through

this issue since, I suppose, June. You know, having participated with the Court in a number of oral arguments what the Court's preference is, I've read the papers, I don't need to be educated on the background of the matter. I have a number of questions I'd like to see if we could get those addressed upfront, but the parties should feel comfortable that they'll have sufficient time to make any argument they want to make, even if what they have to say is not addressed in the questions that the Court asks.

So let me -- I have a couple of notes here.

Let me just start with a real quick softball. Teva uses the term "nonresponsive" in its papers. Is that just another word for irrelevant? Teva?

MR. GREENE: Your Honor, this is Jeff Greene for Teva. I think it is. You know, when we talk about nonresponsive, we look at, you know, are the documents nonresponsive or responsiveness to the claims, then issues in the case, right? And so whether a document is nonresponsive or irrelevant, I think it's the same. You know, I suppose there could be a, you know, and I'd have to think it through a little bit, Your Honor. There could be a document that's responsive that's irrelevant, but I'd have to -- I'd really sort of have to noodle on that.

But in the end, a nonresponsive document is a document that has -- that doesn't meet the fundamental tenets

of claims and defenses of the case, and otherwise responsive to plaintiffs' discovery requests.

THE COURT: That's what I thought. So Teva argues in its moving papers as follows: "At this point, the issue before the Court is not what the ESI protocol permits or does not permit as it relates to CMML. Rather, the Court must rule on a straightforward proportionality ESI discovery dispute."

Is it Teva's position that in connection with the Court's ruling on this issue, it should disregard whatever is required under the ESI protocol?

MR. GREENE: No, Your Honor, we're not saying you have to disregard the ESI protocol, and I don't think there's any evidence that we have disregarded the ESI protocol.

THE COURT: Okay. So what -- in terms of terminology, what Teva has done, and we call that what? What do we call that, the CMML application? Is there a name for it so that we're all on the same page? What do we call it?

MR. GREENE: If you want to simplify it, Your Honor, we can call it a CAL exercise, a Continuous Active Learning exercise.

THE COURT: Okay. So after negotiations broke down in trying to reach an agreement, it appears that CAL undertook -- I'm sorry, Teva undertook this, what we're now going to call CAL exercise. Is that right?

MR. GREENE: Yes. So -- yes. I think the -- we

were, since early July, Your Honor, when we first started working, you know, understanding the true nature of the hit report, we had started using CAL to assist us in prioritizing the documents.

So helping -- using the computer to help us find the most relevant documents and bubble those to the surface.

So I don't think it's fair or accurate, if I may, to say that we just started using the CAL exercise when negotiations fell apart. We were using CAL throughout that time to prioritize the documents. Only in the last month or so, did we reach an actual point where the cutoff, where we reached a logical cutoff point, which is to say the CAL exercise, after bubbling up all the most responsive documents for the priority custodians, which have been produced, we got to the point where it said, hey, the CAL system, the CAL exercise said, hey, these documents are -- the system believes to be nonresponsive to what you're looking for.

So at that point, after we had our discussions with Your Honor and Mr. Slater in July and August, at that point, we, you know, we continued doing our review with respect to the priority custodians and we reached a point where -- within the last month or so, that we've been able to cut things off or reach a logical cutoff point that says, there are roughly 260,000 documents that the system has deemed as nonresponsive, 99 percent of which are nonresponsive. We've tested those, so

that's a validation process, and that's where we are today, if that makes sense.

THE COURT: Can you tell the Court what input plaintiffs had into the validation protocol or process that Teva used?

MR. GREENE: The -- we discussed, obviously, Your Honor, we discussed -- there were discussions about the steps we were taking, but to answer your question, we did not provide plaintiffs with any input into the validation protocol. But, Your Honor, if you recall from our discussions, we were willing to do that, we were willing to share information with them, and we have shared a significant amount of information with them about our validation protocol, but because we were unable to reach agreements with respect to production of nonresponsive documents, you know, we conducted our validation protocol, and I'll say, Your Honor, you know, if the Court is -- is interested in hearing the specifics about the validation protocol, we do have Dr. Grossman on the line with us and she's happy to answer any of those questions.

And I note, Your Honor, that in terms of the validation protocol that we did follow, it is -- and Dr. Grossman has sworn to this in the form of a declaration that it is the most robust validation protocol that she's ever seen in her hundreds of TAR and CAL exercises that she's done over the years. And I think that has to say something when

you have the leading expert in the world saying, I've never done as much validation as what was done here.

So we're very confident, Your Honor, that our validation protocol was as robust as it could possibly be.

THE COURT: In effect, isn't Teva asking the Court to bless its CAL exercise and validation protocol? You want the Court to say it was complete, it was accurate, and, therefore, the nonresponsive documents don't have to be reviewed.

In effect, that's what Teva is asking the Court to do, is that right?

MR. GREENE: Correct, Your Honor.

THE COURT: So when we turn to plaintiff, their argument is going to be, Judge, we had zero input into Teva's CAL exercise. We had zero input into Teva's validation protocol.

The ESI protocol requires that the parties meet and confer and cooperate in good faith regarding the disclosure and formulation of appropriate search methodology, search terms and protocols and the search methodology, et cetera, regarding TAR.

Plaintiffs are going to argue, if they had zero input into the CAL exercise and the validation protocol, how in the world, Judge, can you say they satisfied the ESI protocol?

And let's take for granted that Dr. Grossman is the world's leading expert, and let's take for granted what she

says in her affidavit. How can we ignore the language in the ESI protocol which requires the parties to meet and confer in good faith about the TAR that's going to be done. How do we respond to that, Counsel? What do I do when you tell me, this is the greatest thing since sliced bread and you have the affidavit from your expert and plaintiff says, they violated the ESI protocol because we had zero input into it and we don't agree with that. How do we respond to that?

MR. GREENE: Well, Your Honor, I think it's important to understand we have met and conferred throughout. You know, obviously, there was initial discussion in November. Obviously, there are different views of that initial discussion in November. Search term negotiations continued through -- into June of 2020 this year, and at that point, I think they were finally finalized on June 24th-ish of this year.

Within a week of that, Your Honor, we raised the issue of TAR -- of using CAL for the first time. And if I recall correctly, Mr. Slater on that call said, I have not looked at your submissions but we have real problems with it and we're not inclined to do it.

We sent a significant white paper to them, you know, literally dozens of pages about what we were proposing to do, and literally, Your Honor, we got this pretty dialed in, 38 minutes later, they wrote back and said, no, we don't

agree. And I don't know how they could have read through all of our white papers and all of the materials we proposed in 38 minutes to say, we don't agree.

So I don't agree with the Court that we've not met in good faith and negotiated in good faith. There have been countless negotiations and discussions about the process that we're willing -- that we were following to get to this point. Unfortunately, despite the best efforts of all the parties and Your Honor, we weren't able to reach agreement and that agreement was fundamentally based on, or the lack of agreement was fundamentally based on plaintiffs' insistence on nonresponsive documents, so -- and for which there's no support whatsoever.

I think it's also important to understand in terms of a CAL exercise and again, I don't know how to do this, but we have to separate out how TAR 1.0, a TAR 1.0 exercise which is based on seed sets, how an exercise of TAR would work, TAR 1.0 versus CAL. If we had elected to use a TAR 1.0 methodology or process, I would say that there -- there would have been a much more significant likelihood of sharing of seed sets and input with respect to the -- the training of the system.

But under a CAL exercise, Your Honor, you just start looking at documents and, you know, we've reviewed more than 700 -- we've used 700,000 documents as part of our review to train our CAL system.

So in order for us to get input from plaintiffs on the CAL training exercise, they would have to sit there with us and train 700-and-something, 760,000 documents, which is the number of documents we've reviewed so far.

So it's not so much we didn't let them do it, it's just the way CAL works is, it's a -- you know, it's an exercise in continuous active learning, okay? So I think it's important to make that distinction that, you know, throughout this, and, you know, I'm sort of guided by 26(g) here, Your Honor, we took, you know, we took reasonable efforts to go through and find the most responsive documents.

We produced those to plaintiffs first. But right now, we're at a stage where we have hundreds of thousands and when you look at all of the custodians we have, potentially millions of documents that have nothing to do with anything, not responsive to this case, and we're going to incur substantial costs in order to review those.

So I don't agree, Your Honor, respectfully, that we didn't meet and confer. We did. And I find it a little bit odd that we're here today and Mylan has just raised this issue, their issue of, you know, of using CAL for the first time.

Mr. Slater didn't seem to raise any objections about how prejudiced he was about hearing from Mylan for the first time this late in the game. We've been doing this, we've been

having these discussions since literally the first available opportunity after the search terms were finalized in June.

So I disagree respectfully, Your Honor, that there was no input. I disagree that there was no opportunity for reasonable meet and confer. We used -- under 26(g), we used our best reasonable efforts to produce documents.

And, Your Honor, I think it's important to remember that we're doing everything we can to meet our discovery deadlines and, you know, we have met our discovery deadlines and we will produce all of the responsive documents for all of the custodians by the discovery deadline. We're just simply asking for -- to avoid the cost or shift the cost associated with reviewing potentially millions of documents that are irrelevant to this case, or nonresponsive to this case.

THE COURT: Mr. Greene, let me fast-forward a little bit in the chronology of this dispute to the discussions, I believe, over the summer or the fall, where the plaintiffs and Teva attempted in earnest to agree on some sort of TAR protocol.

Now, I'd really like the record to be clarified on this, and we're going to obviously hear from plaintiffs on this, but correct me if I'm wrong, I thought that after the intensive discussions that the parties had and the Court was involved in some of those discussions, there was a protocol that was essentially agreed to. And I think, if I remember

right, it's attached as Exhibit B to Mr. Slater's submission to the Court on this TAR issue.

And there were two issues, if I remember right, that Teva said we're not going to agree to. One, they didn't want the agreement memorialized in a Court order, and, two, they didn't want plaintiffs to review alleged nonresponsive documents, and I think the number was 5,000.

It was the Court's understanding and correct me if I'm wrong, that apart from those two issues, the parties had an agreement. Am I wrong about that, Mr. Greene?

MR. GREENE: Your Honor, there was never any agreement, fundamental, you know, you can't -- if -- the fundamental dispute from our perspective was production of nonresponsive documents and once that was -- you know, once Mr. Slater said, you know, he's not going to give up on that, you know, that effectively eliminated any possibility of agreement and at that point, we said, we'll do our validation and we're going to do the most robust validation that we can do under the circumstances.

So, no, I disagree that there was any kind of agreement. We never signed anything, there was never an agreement on the record, and so, no, Your Honor, there wasn't.

THE COURT: Okay. I'm sorry about this, Mr. Greene, but I'm going to hold your feet to the fire on this, because this is, in the Court's view, this is a very important point.

Aside from, one, incorporating the terms into a Court order, and aside from the review of the nonresponsive documents, it was the Court's understanding that everything else was agreed to. Am I right about that?

MR. GREENE: You are correct about that, Your Honor, but it's difficult to look at an agreement, you know, in component parts.

THE COURT: Okay. Were there differences between what essentially broke down in the summer and the fall and the ESI and CAL exercise that Teva is asking the Court to adopt, were there differences?

MR. GREENE: I think there are differences, Your Honor. I mean, obviously, we didn't turn over 5,000 nonresponsive documents for Mr. Slater to review. If anything, Your Honor, I would say we did a more robust process in terms of reviewing and, you know, Dr. Grossman can talk to that if you're so inclined to hear it, but I think the reality is, yes, it was different, but -- and part of those differences were based on, you know, as we worked our way through the, you know, through the review, and, you know, we did two levels of broiler's protocol, two levels of broiler's validation protocols, a review of 15,000 documents, nonresponsive documents of which we found 109 could be only marginally responsive, and then we did 11 additional training rounds of the CAL system to try to find additional documents,

responsive documents, which revealed -- which resulted in only a very small number of additional documents being found.

So, yes, Your Honor, it's different but I also think it was actually more robust and I think I -- if the Court, if I could indulge the Court just to ask Dr. Grossman to weigh in.

THE COURT: Well, I don't want to hear from -- hold on. I don't want to hear from Dr. Grossman now.

MR. GREENE: Okay. That's fair.

THE COURT: But if I need to hear from Dr. Grossman, I'll ask for the doctor's input.

But I don't need to hear from her now because I don't think the issue is, you're telling me that Teva used the gold standard in what they're asking the Court to adopt. Let's assume for the sake of argument, maybe that's true. Let's just assume for the sake of argument.

We know that plaintiffs don't agree with you. We know it. We know that they submitted an affidavit from their consultant too, of course, you contest, no question about it, but their consultant says they're not happy with the CAL exercise that Teva did, but I keep on getting back to the ESI protocol which requires the parties to meet and confer in good faith about the methodology.

Here, you have -- "you" not you, Teva, and plaintiffs had an agreement except for those two points, and it broke

down over those two points. But yet, Teva went ahead and did its own CAL exercise without any input from plaintiffs whatsoever. And what the Court is wrestling with is whether that's consistent with what is required in the ESI protocol and that is why, at the very beginning of this argument, I pointed to the language in Teva's brief that in effect said, Judge, ignore the ESI protocol and just do a proportionality analysis.

We haven't talked one word yet almost about a proportionality issue. I'm focusing on, at least at this early part of the argument, as to whether what Teva did is consistent with the Court-ordered ESI protocol. And is it your position that what it did was consistent with the protocol, right? Is that what you're saying?

MR. GREENE: Yes, Your Honor, we negotiated in good faith throughout.

THE COURT: Okay. So let me ask you one more question, and then I want to turn to plaintiffs.

The ESI protocol requires the parties to meet and confer in good faith and one way to read it is to meet and confer in good faith about the issue of whether the pool of collected documents is going to be narrowed, okay?

In Teva's view, when was that duty to meet and confer triggered in this case?

MR. GREENE: Your Honor, the duty to -- as soon as

Teva realized, understood the true nature of the search term hits, based on the file search terms, we understood that there would be a tremendous number of documents to be reviewed, and at that point, in early July, we raised the issue and that's where the obligation to discuss the use of a CAL exercise was triggered. We didn't wait until the end of October when -- or, you know, until October, when we reached the logical cutoff point.

We decided, it was our position, based on the language of the ESI protocol that there was a substantial likelihood that we would get there and, you know, the discussions were, we're going to use the CAL exercise and at that point, we were not sure whether or not we would use CAL to cut off, because we didn't know, you know, obviously, working our way through the CAL exercise, the reality is, Your Honor, at some point over the summer, after the negotiations fell apart, we reached a logical conclusion that it was appropriate to use the cutoff, you know, to trust the system, and say that, you know, these 260,000 documents for the priority custodians were -- were irrelevant or nonresponsive.

And that's what we did. So I think, Your Honor, if anything, we, you know, we went beyond the scope of the ESI protocol, because we, you know, we met and conferred early, even before we intended to use CAL as a cutoff mechanism for the nonresponsive documents.

And a final point, Your Honor, if I may, I do think it's really important for the Court to weigh -- you know, you referenced Mr. Jaffe and obviously, Dr. Grossman. That's not an equal fight between those two individuals. We have an expert, Your Honor, Dr. Grossman, who is the leading expert in the world and Dr. Jaffe is just a guy who -- you know, he's a smart guy, there's no doubt, he graduated Columbia, but the sum and substance of his CAL experience, Your Honor, is one line on his resumé that says something like predictive coding recommendations.

So I think the -- what I would say, Your Honor, respectfully, is to use caution when looking at what Mr. Jaffe is saying, because he's not an expert, he's never been certified as an expert in anything with respect to TAR.

He is, you know, he may know a few things about it but, you know, I think it's instructive that -- to look at the declaration that he submitted, which was challenged significantly by Dr. Grossman and her submission from -- and her declaration on July 28th, to which Mr. Jaffe has never responded, and he can offer absolutely no empirical evidence that we did anything wrong, that our system wasn't trained right.

He just says, you didn't do it right, but there's no evidence whatsoever to support that. He's not an expert, he is not at the same level, respectfully, as Dr. Grossman, and

so I think the Court has to establish some weight there in terms of what it's willing to accept from a guy who might know a thing or two about TAR versus the world's leading expert. That's not a fair fight, Your Honor.

THE COURT: Well, I think we're talking over each other because Dr. Grossman is unquestionably qualified and Dr. Grossman addresses how CAL works and its effectiveness and this supposed gold standard that was applied in this case.

Dr. Grossman doesn't address whether Teva -- nor should she, because it's a legal question, whether or not Teva complied with the ESI protocol. She's just -- the doctor -- it's not her role to make that decision understandably.

So let me get back to something you had said, because I want to understand Teva's position. Is it Teva's position that the trigger in the protocol to meet and confer in good faith and collaborate is triggered when, one, Teva makes a subjective actual decision that it's going to use TAR to reduce the documents to review or, two, there's a substantial likelihood it's going to do that. Is that Teva's position?

MR. GREENE: Yes, Your Honor.

THE COURT: Okay. And before that time, before June or July, was there a reasonable likelihood or possibility or probability that Teva was going to use TAR to reduce the universe of documents to review?

MR. GREENE: I think it's a possibility. At that

point, Your Honor, we didn't have, prior to the end of June, we didn't have a clear sense in terms of what the final search terms were, so I would say no. We didn't have a reasonable belief that there was going to be use of, you know, use of CAL for cutoff purposes, and I think, Your Honor, we put in our papers that, and letters to plaintiff, that, you know, throughout the course of the summer, that we hadn't reached that point yet.

Because of CAL -- as Your Honor, I'm sure is becoming aware, you know, the CAL exercise should be a Continuous Active Learning exercise and, you know, it's iterative in the sense that, you know, from day to day, we don't know where the system is going to have us go, and so obviously, we're learning as much as the system is learning in terms of what the system is telling us how much is responsive versus nonresponsive.

So I can't tell you that, you know, in early June or before June, that there was a belief that we were going to use CAL for cutoff because I don't think there was.

THE COURT: Teva knew, because this is in the declaration of counsel that was submitted, that it was a concern of plaintiffs as early as November whether or not Teva was going to use TAR or CAL to reduce the universe of documents to review; is that correct?

I mean, you don't dispute that, because it's in the

declaration, right?

MR. GREENE: Correct, Your Honor.

THE COURT: All right. Having that knowledge, why did we go through extensive negotiations and disputes about search terms that resulted in a December order, and a reduction of the search terms in June of 2020? Why did we go through that exercise if Teva knew plaintiffs' concern and only after all that was done, did it tell plaintiffs for the first time that this is what they were going to do? Why didn't Teva back in the fall say, listen, we haven't made a decision what we're going to do, so why don't -- we have continued these discussions and we're not going to take all this time talking about search terms, because we know plaintiffs, that if we decide to use TAR to reduce the universe, you're going to take the position that we have to look at the whole universe of documents and not cull them down by search terms, and we're going to disagree on that, so let's go to Judge Schneider on it and get a decision on it.

Why wasn't the issue raised in November and December and January and February and March and April and May? Why wait until June or July?

MR. GREENE: Well, Your Honor, I think there's two issues. Number 1, you know, obviously, we didn't know what the search term hits would have been until we got the final, you know, the final review, the final search terms, and, you

know, same with custodians.

So I think it's, you know, obviously in a perfect world, had we known the numbers and known the search terms and the custodians back in November, I think we could have made a more reasoned decision but we were negotiating and meeting and conferring in good faith throughout, and I think, Your Honor, it's important to understand, the ESI protocol and general meet and confers in general, don't necessarily require agreement, they require us to meet and confer in good faith which we've done. The ESI protocol does not say the parties have to agree at the end of the day.

So I think there's this concern that, you know, if the Court is concerned that we didn't follow the rules, I think, you know, I'd respectfully disagree with that, you know, because we did follow the rules, we did say, when we were using CAL at the outset in July, in early July of 2020, we did say we were going to use it, we told them we were not sure whether we'd use it to cut out, but we were going to use it for the purposes of the prioritization.

So at the end of the day, you know, it's difficult to say in a vacuum, could we have done it sooner? I don't think so because we really didn't have the search terms finalized until June.

THE COURT: Well, Mr. Greene, I don't know if you were involved in the case way back when, but I have to

disagree with your statement that you -- that Teva didn't know what the search terms were until June, because the Court entered an order on -- let me get the exact date, so there's no misunderstanding. I have it right here.

The Court entered an order on December 23rd, 2019, listing the search terms that had to be used and the custodians. So why are you saying that Teva didn't know until June what the search terms were?

MR. GREENE: Well, I think, Your Honor, the -- what the Court did thereafter was invite the parties to continue to negotiate those search terms, and that's exactly what happened. We were hopeful, certainly, that the search terms would continue to be narrowed, but at the same time, you know, it's difficult for us to start a process in terms of discovery when, you know, when nothing's been finalized because there are costs associated with, you know, if we're going to collect data and run search terms across data and promote data based on search terms that aren't finalized, there's a cost associated with that.

And, you know, Your Honor, we are here because this is costing all of the defendants, let alone Teva, millions of dollars in discovery, and, you know, for us to start a process in November when we have no agreement on search terms, you know, to -- sorry, in December, when there's no final, final agreement, the Court has invited the parties to continue

discussion, I think that's dangerous from a cost perspective because we could go down the road and say, you know, collect all the data, load all the data, process it. There's a cost associated with every component, with every one of those components, only to find out that later, we were able to negotiate different search terms which may require additional data or less data to be promoted into a platform.

So, Your Honor, I think our approach was reasonable here in, you know, going through this exercise as best we could, meet and confer. We don't have to get agreement under the ESI protocol, and at the same time, Your Honor, we did, you know, Teva did switch e-discovery vendors, not specific, you know, for this case, but they did a global switch for all their litigation and that obviously impacted the analysis as well, because the new vendor, which is Consilio, offered different tools and different perspective on what could be done in terms of reviewing all these documents.

So it's easy to look at it, Your Honor, and I understand where you're coming from. It's easy to look at it in isolation and say, could you have done this sooner. Well, I suppose so, Your Honor, but the reality is, is that, you know, when you look at all of the negotiations that were taking place and all, you know, all of the costs associated with doing discovery twice, which is what we would have ultimately had to do, that's significant and that's real and

that must be taken into consideration.

THE COURT: Mr. Greene, I'm not faulting you, because I don't think you were involved in the case back then, but I'm very confident that if you talk to your colleagues, they will agree with me that it's a completely inaccurate statement to say that the Court invited the parties, after its December 23rd order, to reduce the search terms to be used.

That is not what happened.

What happened is Mylan raised, after the fact, after the Court order was entered, Mylan said, wait a minute, these search terms that we agreed to and you ordered, Judge, are too broad.

And then the parties spoke and negotiated about revisions, but in no way, shape or form, did this Court, quote unquote, invite the parties to change the order that they had agreed to.

You weren't there, but at that final meeting in December, I specifically asked liaison counsel, are there any objections to these exhibits to the order that I'm going to enter listing the parties' search terms and custodians, and the answer was no.

MS. LOCKARD: Your Honor, it's Victoria Lockard.

THE COURT: Hold on, Ms. Lockard.

MS. LOCKARD: Sure.

THE COURT: So my question is, why didn't -- we're

going to hear this from plaintiffs when it's their turn. Why didn't Teva, when Mr. Slater asked Teva and the other defendants to run hit reports, to run sample reports, and this was before the December 23rd order, Mr. Slater asked that that be done, probably for the purpose of what eventually happened to avoid a post-order argument that it's too burdensome, and Teva said no.

So, I don't know if it's fair to state, one, that Teva didn't know the search terms until June. They knew the December 23rd order. They knew the negotiations that were going on after -- between June and December with the key search terms, or they knew the custodians. They had the opportunity to run test runs and sample reports, so I don't know if the record really supports the notion that it was not until June that Teva could know that there were so many documents to review.

Ms. Lockard, I apologize. I think I interrupted you. Did you want to say something?

MS. LOCKARD: No, absolutely, I jumped in there. I do, I do, because it, you know, to be fair to Mr. Greene, he was not involved at that point in time, and may not be the best person to speak to the absolute history of that, you know. I think using the term "invite" may be strong but the way we read the 12-23 order and I've argued this before and we put it in our papers, there was a clause in that that

discussed modifications to the search terms, with a good faith basis therefore.

And so when we went into that, our understanding was that, you know, there would be an opportunity to massage those, as happens in virtually every litigation. It is an ongoing process. That has been our experience, and I'm sure Mr. Greene would agree with that.

But we did, we did negotiate throughout the period after December with plaintiffs, but whether this Court invited this or not, we made some progress with Mr. Parekh, but at the end of the day, we weren't able to make the types of reviews that would cut down on the volume of what we were finding large number of just trash hits.

And so when Mr. Greene mentioned the June, not knowing in June what we were dealing with, it's not that we didn't know the search terms, we didn't know the volume yet until we actually collected those, had our new vendor go through and give us the hit counts for each of those.

And I understand there's been the argument about, well, we should have test run on the custodians, but again, when we were negotiating the custodians after the point in time when the search terms were being ruled upon, we didn't know who to be able to pull from.

It takes a great deal of effort to actually get those documents, e-mails, data, downloaded from our client to the

vendor and until we know -- it's expensive, it's time-consuming and until we know who the actual custodians are, there was no way that we could actually pull those over to the vendor and then have the vendor run those search terms for us.

So I don't mean to jump in, this is Mr. Greene's argument. But I wanted to just clarify some of those points.

THE COURT: No, thank you, Ms. Lockard, and I appreciate that, because I know you were intimately involved in this. But from the plaintiffs' perspective, they had no reason to believe that Teva was proposing to use TAR until that letter that came out in June or July.

Why was that not disclosed before we went through enormous efforts to negotiate search terms and custodians because now plaintiffs are saying, and it's hard to dispute, that they wouldn't have agreed to those search terms if they had known Teva was going to use TAR as they proposed to do.

I mean, if everything was put on the table at the very beginning, we wouldn't be arguing. I have a feeling plaintiff would be, you know, you would come to an agreement on the protocol and you'd be on your merry way, but plaintiffs' feeling is, that they were led down this primrose path and that's why they negotiated those search terms, then they reduced that number and then Teva tells them about TAR.

Why wasn't plaintiffs told about TAR before all the

effort went into the search term?

You were in the case at that time.

MS. LOCKARD: They had been told that we were considering using TAR. Steve Harkins in our office submitted an affidavit on that point and it has not been disputed in this case. They were told we were considering it. They were told we were considering using TAR. We had a vendor on the line in November. The ESI protocol does not say it's either search term or TAR. And the case law doesn't support that either.

There's case law that allows for layering. There's no reason to think, you know, the onus has been placed on Teva, to say, well, Teva, why didn't you speak up, why did you wait? Have you ever considered that why didn't plaintiffs say, oh, hey, I hear that you're considering using TAR, we're also negotiating search terms. By the way, Teva, we're doing either/or. It's one or the other.

They never spoke up and said that to us. How were we supposed to know that they were taking a hard line either/or position. They never mentioned it. It's not in the ESI protocol.

So layering procedure is blessed by the case law.

So, you know, perhaps we had some onus to speak up, but they did, too.

THE COURT: Okay. Mr. Slater, or whoever is going to

talk for the plaintiffs, we've, you know, hashed out a lot of issues with Teva. I'd like to hear plaintiffs' position and maybe you could start with what I started with.

Teva argued that we don't have to look at the ESI protocol, it's a pure proportionality issue.

What say the plaintiffs?

MR. SLATER: Thank you, Your Honor. This is Adam Slater. I think that puts the cart before the horse or the horse before the cart, however that term is.

Clearly, the ESI protocol which was entered more than a year ago, at all times placed obligations on the parties that we had to comply with. And it's not disputed -- I mean, not seriously disputed or disputable that the defendant, Teva, did not comply with the protocol. The language is very clear that they needed to meet and confer with us and I'm happy to go through the case law, but I know that Your Honor's read the cases.

There isn't a case that we have seen or that anybody has cited where anything close to this was allowed, where there wasn't either a gleaning to it or that the defendants had to provide, I think that the *Bridgestone* case talked about significant openness and transparency and required the defendant to produce or the -- the producing party to produce the actual training documents, for example, and to provide, and the Court emphasized it several times, and that's probably

their best case and they didn't comply with what that case said, so you don't get to a proportionality analysis by leapfrogging over the ESI protocol which was governing our conduct throughout this litigation.

I think it was entered in June or July of last year and it certainly had a big role in helping to shape our meet and confer on the search terms and all of the other things that happened later, and, you know, I certainly don't want to over-argue any of these points, Your Honor.

But I certainly can, as bullet points, point out things that Your Honor has asked defense counsel with to emphasize the importance of what really went on.

When we asked about their potential use of TAR, that was because we were very open to it. Because, and Your Honor knows from the case law, there may be benefits but it has to be done in a way that's mutually agreeable, and that's what the case law says, with tremendous cooperation and transparency and the defense gave us, you know, really not much.

I'm reading from Mr. Harkins' certification where he said that -- he stated that they were evaluating -- I'm quoting this. We were evaluating whether or not to use TAR, but had not made any determination as to how or whether we would do so in the future, and as Your Honor knows, it's been argued many times by the defense, that they are the master of

how they produce their documents, so they chose search terms.

We were not in a position to compel them to use TAR. That issue was lost by plaintiffs in the *Mercedes Benz* case where Judge Cavanaugh as the Special Master, made it clear that once the defense chose that road, do not come back later and ask for a retry.

The plaintiffs were asking for TAR. We respected the concept that, which we don't love as plaintiffs, that we have little input into the decision as to how this will be conducted. So they chose search terms, they chose to move forward that way. All of the discussions centered on the search terms, and I think Your Honor has hit on a very important point, which is -- I almost felt like Chicken Little back in the fall of 2019, when I kept saying, why won't you sample, why won't you test, because they easily could have done so.

They knew who the key custodians were going to be. They provided a presumptive set of custodians and they knew what the search terms were that we were negotiating, and they should have been testing and they should have been collaborating with us the entire time.

I mean, this, really a big part of this application is about a lack of due diligence by Teva, because if Teva had exercised due diligence, A, they would have tested and sampled those search terms and then they would have shared the data

and we would have negotiated and if we couldn't agree, Your Honor, they would have presented the issue to Your Honor and Your Honor would have made the hard call on which search terms are going to be included or not.

They ended up agreeing, as Your Honor said to the full set, then as Your Honor noted, Mylan came forward and said that they felt like the hit counts were too large and we, in good faith, entered into negotiations with all of the defendants to modify the search terms as they deemed necessary, and the suggestion by defense counsel that somehow we forced them to accept the modifications and no further modifications, that's not accurate.

All they had to do was go to Your Honor and say, you know what, we're not going to agree to these narrowed search terms because we think they need to be narrowed more. That was not done.

And then, after that exhaustive process that went on for months and months, and culminated with Your Honor entering that order on June 24, at that point, they had now agreed again, where was the diligence for the six months at the start of the year? And I think that it's very clear on this record that this was all knowable and we should have engaged in this conversation earlier.

And then we get the letter, July 1st, one week after the new search terms were set, are we to believe that while

the new search terms were being negotiated and narrowed, that they weren't running searches and getting hit count and evaluating how many documents were coming up both under the original search term set and the proposed modifications? Were they not running alternative searches to say, look, we want to get rid of this term or that term or change these modifiers or those modifiers, because it's reducing -- it's reducing the document count significantly, and we've studied those documents that are being excluded and they're not relevant and let's talk about it.

All of those things could have happened and should have happened if this was a legitimate issue. It didn't happen.

Then July 1st, they come forward and they -- and let's be very clear, Your Honor. At first, they said they were going to run TAR and then it turned out they had already started running it.

And Your Honor doesn't have to make any credibility decisions, but I think that it's very, very plain that when they began to run TAR, it wasn't solely to help prioritize documents for plaintiffs' benefit, which is the story that's being told. We appreciated if that was something they were hoping would happen, because it would be helpful to us, but clearly, that was a decision that was made with an understanding that this would likely lead to a narrowing

application, and the process started with that letter.

So, you know, there's so much here, and I'd be happy to, if I had to, to walk through the case law, Your Honor, but you asked us some particular questions on the record, and we've answered those questions. There is very good case law including the Third Circuit recognizing the proposition that a party, for example, can be compelled to produce documents without responsiveness/relevancy reviews. So we've answered that question with multiple cases.

We've answered the questions about what occurred last year in the discussions and that -- with regard to that letter in November, and again, the case law makes it very clear, in accordance with our ESI protocol, that a party that wants to use TAR needs to meet and confer, it's the backbone of the Sedona principles, cooperation and transparency and working through this together, so that you could enter into a validation protocol that makes both sides comfortable, and if there's a dispute, the Court arbitrates that, makes the decision and determines how you will proceed.

And, you know, Your Honor, the other thing I think I'd like to mention and then I'll try to be quiet and see if you have any other questions, obviously, I'm picking and choosing a few things that seem significant to me but I may miss an issue that Your Honor thinks is more significant, but we had a protocol which counsel conceded on this call on the

record, during this hearing, that was agreed to, but for two specific issues, whether it would be filed and whether or not we would get the 5,000-document audit sample, which, by the way, we were supposed to have the right to pick the criteria and have a lot of input as to how those documents would be collected.

So we know that it was agreed to, but for those two issues, and we know, and I'm not going to do it, because it's so clear, there was a multitude of protections built into that protocol that we were willing to go forward with, to save them this money as they said that's their concern, that would have given us tremendous protections and confidence that at least our interests were being protected.

I'm not going to walk through them, they're in the record, Your Honor has them. We, out of caution, did not file that negotiated protocol, we don't think there's any reason why it would not be filed on this docket, but we were being careful and did not file it. But there are levels and levels and levels of reporting, and it went all the way back, Your Honor, to, they agreed they were going to run TAR on the entire document set, not the narrowed set.

They were going to use the core discovery documents for the initial learning process. They were never used to, quote unquote, teach or educate the system. Those are the most relevant potentially documents in the whole litigation.

Chock full of important vocabulary and terminology and none of those were used. We knew that, we found that out in the meet and confer and they still didn't use it.

I would have a very hard argument if they said, look, Judge, we ran exactly the protocol that the plaintiffs agreed to, and the only question now is whether we're going to have to give them documents. I suppose that that would have been an argument that we would have had to really nail down, and frankly, it's astounding to us on the plaintiffs' side that's not what they did, but they didn't.

And at this point in the litigation, we'd ask that their application be denied.

THE COURT: Question for you, plaintiff -- Mr. Slater.

We know that the protocol requires the parties to meet in good faith, et cetera, et cetera. One way, like I said, one way to read this is, when someone is going to use TAR to reduce the universe of documents to be reviewed, I asked Mr. Greene, what's Teva's position about whether -- I understood the response to be, one, when there's an actual subjective decision that was made to do it that way, that's easy, and, two, when there's a, quote unquote, substantial likelihood that will be done.

Okay? What is plaintiffs' position about when that duty is triggered? Is it only when there's a substantial

likelihood or subjective knowledge, or is it when there's a reasonable prospect or reasonable possibility? What is plaintiffs' position on that? When was that duty that's in the ESI protocol, when was that duty triggered?

MR. SLATER: I will start, Your Honor, with the best case scenario for Teva. Their best case scenario is that the duty was triggered at the end of June when they claimed that they first realized that there was this problem and they were going to start to use TAR. And that's -- and that's their position, they had already put TAR into place, so they hadn't met and conferred.

Now, it's taking their position to, again, its best conclusion, which is, there came a point where they said to us, we want to narrow the set, because we've realized we need to do it.

If we take at face value what they're saying occurred, we -- that either occurred and it's not really clear from their argument, whether they're saying they realized that in July or they didn't, so it was either in July or it was later, but in either case, we met and conferred, we reached agreement on a protocol, and they chose not to follow it, and I believe they claimed at that point, so let's go with their statement, they had still not yet decided whether or not they were going to use the review tool to narrow the documents for production.

Let's remember what they said. Let's take them at their word for a moment. They said they had not made that decision, and now they say, well, we finally made that decision after the talks broke down on the protocol, based on the new compiled information in -- I think counsel said October.

If that's true, even if that's true, and even if they're right that that was the trigger, they violated the ESI protocol, because at that point, they were required to come to us and say, look, this is something that we're going to do, we want to talk to you about the parameters.

Now they know what our answer would have been potentially, but who knows, they could have been more forthcoming, they could have offered something different, we could have had a discussion, they could have given us the updated data.

Whatever options they had, they were required by the ESI protocol to talk to us, even at that point, under their best case scenario, and they didn't do it.

Now, what do we think the trigger point was? The trigger point, from our perspective, because they had said to us during the meet and confer, we haven't made any decisions on TAR. We don't know anything, and I read you the quote from Mr. Harkins' certification. Now, they start to find problems, again, this is giving them benefits of the doubt, early in

2020. They know that TAR is out there, they know that's a possibility. If they're having a concern about this and they're actually -- there's a possibility to use it, they should bring it up.

Now we know what occurred, I'm not going to go through it again.

So even if -- however you slice it. We believe it's when the possibility was raised.

So at the point when Consilio started to talk to them, if that's when it occurred, and we're making a lot of inferences here, favorable to Teva's position, personally every inference, if not all of them, they should have been speaking to us then.

They certainly should not have implemented the TAR before they sent their letter to us, which again, that was conceded to us once we started talking, that they had already put it into place and they were already running it with the possibility that they were ultimately going to use it for review and they didn't talk to us.

And the last thing I'll say on that is, for counsel to say, there's no obligation to agree, all we have to do is confer and talk to them, I think is obviously inconsistent with how this litigation is managed, to the extent there was a disagreement arising from that meet and confer, I think that everybody understands, it would have been presented to Your

Honor for determination.

MR. GREENE: Your Honor, if I could just --

THE COURT: Hold on, hold on, hold on. I'm not done with Mr. Slater yet, okay?

MR. PAREKH: Your Honor, this is Behram Parekh. Can I just add one item to what Mr. Slater just finished talking about?

THE COURT: Sure.

MR. PAREKH: Your Honor, I was in the room at the November conference with Mr. Harkins, and Ms. Lockard raised the issue, why didn't we speak up? We did, at that conference when they said to us, hey, we might use TAR. We said, hey, if you're going to use TAR, you need to tell us because right now, we're negotiating search terms and TAR and search terms are not compatible. We made that statement, we knew that, they knew that going in, that our position was, if you're going to use TAR, that's a different negotiation. If you're going to use search terms, that's a different negotiation.

So in terms of when that duty arose, from my perspective, having been in that room, that duty arose as soon as they decided to go down the path of search terms.

THE COURT: Okay. Thank you, Counsel. Let me ask -- I want to turn back to Mr. Slater. Here's my question.

Dr. Grossman is unquestionably a qualified expert. I don't have to decide whether she's the world's best or next to

best. That's neither here nor there. She's qualified. She attests to the fact that this is -- that what Teva did is, in effect, the gold standard, that it works, it's been validated better than anything else, and here are the objective statistics to show it works.

Why shouldn't the Court accept -- accept Teva's representation that its system works and why should the Court then turn around and then either order it to spend millions of dollars on a document review or turn over potentially millions of documents without giving them the opportunity to review those documents? What say you?

MR. SLATER: The first thing I'll say is, I don't believe that this application should be determined based on the referendum over the benefits of TAR 2.0 or this program. That's not what we're arguing here.

In fact, Dr. Grossman was the expert consultant for the defendant, Teva, the entire time. So she was heavily involved in our negotiations when we came up with the protocol that was agreed to, but for two issues. All of the validation -- the robust validation and our input into the learning process and the fact they were going to stop threading the e-mails so we could get all the proper e-mails, and the fact that they were going to go back to the entire set of documents and not just run the TAR on the search term set and so on and so forth. She was the expert the entire time and they agreed

to those provisions.

Now, so why -- and I guess the other part of the question is, why shouldn't we credit what she says. I don't think Your Honor has to answer that question. I will anecdotally say, that in my experience and I'm sure Your Honor's experience and the experience of all the experienced trial lawyers on this call, we've all seen a whole host of world famous experts who have not seemed so impressive when they walked off the witness stand following cross-examination.

So I'll just put that there, and I'm not going to get into the specifics, but we had a call with Dr. Grossman and the defense during the process in July, and I had an opportunity to talk to Dr. Grossman and I think it was clear that, you know, what was being presented in the papers, there was -- there was a lot of room for further interpretation and for more input into how the picture really was being painted based on some of the answers to some of the questions during that conversation.

So, again, this isn't a referendum on TAR, it's not a referendum on Dr. Grossman's credentials, and certainly, there's not a full record if we're going to start to make a decision based on the word of the experts.

We're not going to dispute that there could be some benefits to using this type of technology, but that use of the technology should have been done in accordance with an agreed

protocol that we basically had.

Again, it's astounding to us when we found out that they were looking to narrow the documents, we could not believe that we didn't read in the first or second line of that letter, we used exactly the protocol you agreed to so you have nothing complain about. So we're not comfortable with what they did here. And Dr. Grossman, she may think it's a good protocol, but you know what, there may be others that we don't know about or we haven't gotten into and we haven't deposed her on.

So there's a great deal of information that we would get into, but the bottom line is, they ran something sight unseen to the plaintiffs, without any input from the plaintiffs and essentially are asking for an order from the Court that where they have exhibited a lack of due diligence for a year, that they get not only a do-over, but they get to give us the documents that they want to and withhold the documents that they don't want to give us.

They've done a unilateral protocol. I mean, how do the plaintiffs end up worse off than we should have been to begin with, with all of the equities that flow into this, and I'm sure Your Honor has already recognized, it's too late to start negotiating further. I mean, the rubber has finally hit the road, almost hit the road once before and they withdrew their application.

And then the last thing I'll say on this is, they withdrew that application. They didn't know how Your Honor was going to rule, if they wanted you to call the shot. I mean, that was their decision. We were ready to let Your Honor rule on this, and we would have abided by whatever Your Honor said. They made the decision to pull this application and to walk away from this, months and months ago and now we are here. I hope that answered the question.

THE COURT: Mr. Slater, what relief do the plaintiffs want?

MR. SLATER: I think that, I think that the simple answer is, we would prefer that Teva follow through and complete its obligations. The alternative is that Teva produces the so-called nonresponsive documents, which even by their own calculations, there's probably several thousands, at the minimum, relevant documents in there, some potentially very important to this case, that they give us those documents to search as we see fit.

I don't really think that there's an alternative. You know, as far as the concept of the time that we've spent and the money that we've spent, if that's the outcome, you know, we've asked for sanctions, but that's something we leave to the Court and, you know, the most important thing to us is what Your Honor does with the documents and what you order Teva to do.

So again, either they complete their obligations or they produce the documents to us, which again, there's more than enough authority for that, as Your Honor asked us to look into.

THE COURT: When you say "complete their obligations," you mean do a manual review to determine what's relevant and what's not relevant? Is that what you mean?

MR. SLATER: Right. That's the protocol, the search term protocol which they agreed to, and that's the process they agreed to, and I think that it's very hard to imagine that they can, under these circumstances with the lack of diligence that's been documented in the record, come back and want to prejudice plaintiffs under these circumstances. You know, whatever the cost is, I can't imagine it's a surprise to anybody. We're all spending a lot of money. I can assure Your Honor we're spending an enormous amount of money getting documents interpreted and doing all the things we're doing on our side. So nobody is getting a free ride here.

THE COURT: Okay. Mr. Greene, you wanted to --

MR. GREENE: Thank you, Your Honor. A few points. Mr. Slater said that, you know, when we reached the conclusion or when we reached the cutoff point, we should have come to him and met and conferred, which was obviously in October. Perhaps Mr. Slater is forgetting the fact that we met and conferred on October 5th, and had, you know, and provided

detail with respect to that meet and confer by letter of October 6th, and that -- from Ms. Lockard.

That discussion was a meet and confer and so I'm a little surprised that Mr. Slater is misrepresenting the fact that we did not meet and confer on that point.

There was a robust meet and confer. Mr. Slater asked for time to consider our proposal -- the information we provided on October 6th. On October 11th, the following Monday I believe it was, Your Honor, we learned that Mr. Slater was not going to agree and, thereafter, on October 13th, we filed our, you know, this motion.

So again, to say that we didn't meet and confer throughout in good faith is just a fallacy, and Mr. Slater can invent whatever timeline he wants, but the fact is, we disclosed this at the very beginning when we recognized that CAL is a process and it is an exercise that would be useful here, and I think, Your Honor, it is important to understand that CAL is -- CAL is very different than TAR 1.0. It's not like we're doing 500 seed set documents. With CAL, you just start reviewing documents, and we could have elected, you know, you just start reviewing documents and we, in fact, we reviewed 700,000 -- more than 700,000 documents today, and, you know, throughout the CAL process, which was not started before, you know, anytime before June of 2020. So I want to make that very clear on the record that we did not start CAL,

you know, without meeting and conferring. We started CAL and we disclosed to plaintiffs that we were going to use a CAL system to assist with the prioritization of documents, which is consistent with what we did.

At some point, we reached a process where we said, hey, this is going to, you know, there's going to be a logical cutoff point and when we reach that logical cutoff point and we were confident that the cutoff point made sense, you know, we disclosed that.

So I really struggle with, you know, any kind of insinuation that we didn't meet and -- that Teva did not meet and confer in good faith, which we absolutely did throughout.

Another point, Your Honor, with respect to, you know, Mr. Slater says, there's no cases, and apparently Mr. Slater is now the authority on TAR, but there are no cases on that that say that there's no agreed -- you don't have agreement to TAR and that there's no transparency.

I'm happy to provide the Court with that, with those case citations. The *Global Aerospace* case is one that comes to mind, and in that case I believe, and I could be corrected on this, but that case, only an 80 percent recall was accepted by the Court. And remember, recall is the measurement of how many responsive documents, how much of the responsive population was actually found.

Here, we found 92 percent of the responsive

documents, okay, so I think that's important and I'm happy -- I'm happy to provide the Court with a submission tomorrow, Your Honor, of those cases where TAR wasn't disclosed, where there was no transparency in the process, because, you know, that is -- with CAL 2.0 or with TAR 2.0, that's a more frequent position. Obviously, Your Honor, I'm also amazed frankly, Your Honor, astonished even, that there's talk that Teva reached an agreement back over the summer, and, you know, we're playing with words, we agreed to some of this but we agreed to not some of this. And, Your Honor, it's really simple contract analysis.

If I go in and say I want to buy a car and I say to the dealer, I will buy this car if you throw in a set of floor mats and the dealer says no. I didn't buy that car. There is no contract to buy that car. Teva did not agree to the TAR protocol because plaintiffs refused to accept that we would not turn over nonresponsive documents.

Mr. Slater can talk all he wants about, that there was an agreement. There was no agreement. There were terms that made sense, there were terms that we would have agreed to, if that final point of the 5,000 nonresponsive documents that plaintiff had been wanting to give up on that, but they didn't, and there was no agreement.

So I think that's really very important for us to look at and say, you know, there was no agreement whatsoever.

I also think, Your Honor, you know, we're losing sight of what's important here, which is the proportionality of this.

You know, we're going to spend, if the Court orders us to review these documents, millions of dollars to review nonresponsive material. And Mr. Slater says, oh, it's just really easy, turn over all those documents and he says there's unfounded -- you know, there's unfounded reasons for not, you know, for plaintiffs to turn -- Teva to turn those documents over. There's no case law that says we have to turn over nonresponsive documents. It just doesn't exist.

So I think it's really important to say, you know, Mr. Slater in his brief, he didn't cite to any cases that say, you know, that require the turning over of nonresponsive documents.

In *Progressive*, Your Honor, the *Progressive* case, which plaintiffs cite prominently to, that case was, yes, there were documents that were -- the Court required to turn over. But the reality, Your Honor, was, if *Progressive* in that case had missed the discovery deadline and at that point, the Court said, no, I'm not going to allow you to use TAR. You just have to turn over what you got.

We made our production deadlines here, and so I think it's a little disingenuous for Mr. Slater to say *Progressive* stands for the proposition that the Court refused to allow

defendants to layer TAR on top of search terms. That's not what happened.

The Court said, you've already blown your deadline, *Progressive*, we are not going to let you change. So I think it's, you know, some of the other points, we are talking about proportionality.

This is not about, you know, we can fight about the ESI protocol, but the fact is, Teva did exactly what it was supposed to do in connection with the ESI protocol. We met and conferred in good faith.

The ESI protocol does not say we have to get agreement.

We offered in connection with the, you know, in connection with the -- you know, the protocol over the summer, we offered a validation protocol. Mr. Slater says he was astonished to hear that there was a -- that we varied from that agreement, which never happened.

The reality, of course, Your Honor, is, we did a more robust validation protocol. We did 15,000 documents, we did two broiler's exercises, we did search terms to try to identify, you know, certain categories of documents to find the responsive material. We did 11 additional rounds of CAML. We did more than what we had agreed to over the summer, and yet, I've not heard Mr. Slater say one thing about how he disagrees with our validation protocol that we ultimately

ended up using, which we disclosed to him for the first time on October 6th, and then, you know, it's obviously in the record now as a result of the submission we've made.

So Mr. Slater says, this is not a recipe on TAR but the reality is, Your Honor, they put forth nothing to say what we did wrong or that there was anything done wrong with respect to TAR. We have the most -- the most robust validation protocol that Dr. Grossman has ever seen, and I think that has to stand for something at the end of the day.

Your Honor, I just, I think it's important also, you know, with respect to the negotiation of the search terms. I want to apologize to the Court, and I did not intend to misrepresent anything the Judge said, Your Honor said in terms of inviting counsel, that was -- I apologize for that. That was not my intent. I was obviously not at those meetings, I was not involved in those cases -- in this case, you know, at that point, so I do apologize to Your Honor.

I think it is important for the folks that were there, including Ms. Lockard, my colleague, to set the record straight in terms of the negotiations over the search terms, and I think she's done that, and I don't know, Ms. Lockard, if you have any other points to make there, but the reality is, we negotiated in good faith throughout -- we worked cooperatively with plaintiffs throughout, and I think at the end of the day, we're here because plaintiffs have been

unrealistic in their expectations in terms of what they think they're entitled to get.

So, Ms. Lockard, I don't know if you have any final points on sort of the negotiations of search terms.

MS. LOCKARD: Just briefly and for the record, there are a couple of historical facts I do want to address. And Mr. Parekh mentioned that at that November meet and confer, which, by the way, I did not attend that, but two of our lawyers did, Steve Harkins who has submitted an affidavit in this case. I don't think plaintiffs have submitted a counter-affidavit responding to Mr. Harkins.

Brian Rubinstein, who was with our firm, was at that November meeting as well and they will both attest that there was no mention by plaintiffs that they would not agree to layer it, and that it was either/or.

The second point of that, is that even if they had, plaintiffs still would have had to go down the path of negotiating search terms, because there were numerous defendants who used search terms without TAR. So there's no prejudice at all to hear from plaintiffs that, well, we never would have negotiated search terms if we had only known that Teva was using TAR, is totally unfounded, because they would have done the exact same thing with all the other defendants.

So to negotiate it now, is no more prejudice than it would have been if we had been negotiating it in January,

February, or June. Thank you, Your Honor, for allowing me to clarify those points.

THE COURT: Thank you. Teva, it's your application, so you're going to have the last word, but I want to find out if plaintiff has anything to add. They don't have to say anything, but they can, but there was one point that Mr. Greene had mentioned that I just want to check with Mr. Slater.

If I recall correctly, and the record will reflect if I'm not right about this, I think Mr. Greene had stated, not in these words, that plaintiffs haven't pointed to anything with regard to the CAL exercise that Teva did that was deficient, and he went on to say that Teva went above and beyond what the parties had negotiated, but I just want to make sure I'm right about this, Mr. Slater, because I have a reference to Page 4 from your October 30th, 2020, submission, and I want you to tell me if this is right or if I got it wrong.

Not in these words, but plaintiffs argue that they didn't start with the entire set of all custodial files, rather than the narrowed search term set. Teva did not use the core discovery documents to educate the system. It excluded documents from TAR review, such as video and pictures. It denied plaintiffs the ability to submit training documents. It gave plaintiffs no reports on the review as the

review proceeded. It failed to employ an agreed-upon stopping criteria and it failed to preclude e-mail threading.

So just -- I just want to be clear about this, Mr. Slater. Are you saying that those are either complaints or deficiencies that -- from plaintiffs' perspective, they're pointing out with regard to Teva's CAL exercise? I just want to get this point clear, because Mr. Greene had argued that plaintiff never criticized their CAL exercise.

Could you help the Court understand what plaintiffs' position is?

MR. SLATER: Your Honor has a correct summary of the points that we gave as examples of the deficiencies and what they did. These were all things that Your Honor just read off that were listed in our brief as examples of things that were in the protocol that we agreed to in July or August, that were not utilized or employed in the protocol that was employed by Teva after they withdrew their application, and there's obviously much more, if Your Honor were to go through the actual protocol that was provided to the Court -- was not put on ECF, as I discussed earlier.

These were robust protocols so that we would be given some comfort that this process was done appropriately. And again, just starting with the search term set as opposed to the full set, it's very significant, because if Dr. Grossman is correct, they would have unearthed documents by running TAR

on a complete set that would not have been found through the search terms because it's an AI-type process that would have found things even without the search terms needed to locate them, and that's Dr. Grossman's -- that's her cause célèbre, that's what she does. She has the patent and the inventor of a system that she says is better than search terms.

So just from the starting point, we lost documents and all things that Your Honor listed, all of those things should have been done and more, all of the other things that you could see in that protocol that we had agreed to, their failure to do those things, we believe are all deficiencies in this process.

THE COURT: Okay. Anything else from the plaintiffs?

MR. SLATER: I don't believe there's anything else that we need to add, Your Honor.

THE COURT: Okay. Teva, you have the last word. You don't have to add anything, but if you want to, the floor is yours.

MR. GREENE: Your Honor, thank you for that final word, you know, with respect to just a couple points.

With respect to the core documents, you know, I don't think it's accurate to say the core documents weren't used for training. You know, many if not -- I would say most of the core documents, which would be FDA correspondence, inspection communications and the like, those would be found within the

custodial files, so it's not accurate to say that, you know, core documents weren't used to train the system.

They would have been reviewed, you know, consistent with a Continuous Active Learning process. They would have been viewed and they were marked as responsive, and they were produced.

So I don't think that's an exercise that, you know, it's sort of based in reality.

Your Honor, there are numerous cases that say it's appropriate to layer TAR on top of search terms, and we cited to those cases. You know, the fact is, what Mr. Slater is looking for is more than what he's entitled to get. If we just did a linear review and, you know, reviewed all the documents that hit on the search term, you would only get those documents that, you know, the responsive documents that hit on the search terms and nothing more.

So, you know, I don't agree that, you know, Mr. Slater is being -- or plaintiffs are being gypped out of anything and it's gone.

Your Honor, when I spoke of the validation protocol that plaintiffs had nothing to, you know, nothing to say, I was speaking specifically about the protocol that we followed, the validation protocol that we followed on October 6th, you know, that we outlined in our October 6th letter, and we've not seen any indication that we should have run more sample

sets or done a different broiler's exercise or reviewed more than 15,000 documents.

The fact is, we did, you know, as I said, we did more in terms of validation than we had proposed to do over the summer because, quite frankly, and I'm not revealing any, you know, client communications or privileged material here, I knew we would be challenged on the validation protocol and that's why we brought in Dr. Grossman from the very beginning here.

Again, Your Honor, we keep referring to an accrete protocol. I can't stress this enough. I didn't buy the car because the dealer didn't throw in the floor mats. We didn't agree to a protocol because plaintiffs insisted on production of nonresponsive documents. So I think we, you know, we have to understand basic contract, basic agreement formation that there was never a meeting of the minds of all of the fundamental tenets of an agreement. All of the terms were never met.

So it's not accurate to say that there was any agreement with respect to a TAR protocol over the summer.

I also don't think it's accurate to say, Your Honor, that we did not meet and confer, or somehow violated the ESI protocol. We did exactly what we were supposed to do and I think we did more than what we were supposed to do. We told plaintiffs that we were using CAML at a point where we didn't

even have to, and that point was in July, in the early July, when we said we were going to use CAML, but at that point, we were not disclosing, we were not saying that, you know, we were going to use the cutoff because we simply didn't know, because that's what CAL does, the Continuous Active Learning process, and we didn't know at that point in time what the ultimate answer was.

And if Your Honor recalls, the ESI protocol is fairly clear, we have to disclose and meet and confer in good faith when we intend to use CAL to cut off the documents -- to cut off documents.

We did that in October, on October 6th, I believe, with the date of our letter, when we said, formally, here's what we're doing. So at that point, you know, we had reached the conclusion that it was appropriate to use CAL as a cutoff.

So I respectfully disagree if there's any argument associated with the, you know, that we did not do what we were supposed to do.

And, Your Honor, if Your Honor is willing to consider it, I'm happy to put forward a, you know, a short paper that details those cases, let's say, where, you know, where Number 1 where, you know, where CAL was not disclosed and there was no transparency throughout the process, because those cases exist, and it's not a requirement that we have to open up a kimono, so to speak, to show everything we did.

But at the same time, Your Honor, I think we have been remarkably transparent throughout, throughout this process, and we've given them literally hundreds of pages of white papers and details, information about the process that we followed.

So for plaintiffs to object, I just think it's, you know, I think we're losing the point here, which is, at the end of the day, if we -- if this order is denied, or if our application is denied, you know, we will spend millions of dollars. And I think at the end of the day, if -- if there is any basis to assert proportionality, this is that basis.

And so if you don't assert proportionality in this case, I don't know when you can get proportionality.

So I think that's about it from me, Your Honor. You know, we certainly appreciate the Court's attention to this matter. We know it's been a long road.

Your Honor, I think there's one final point, you know, with respect to Mylan. You know, Mr. Slater says he was shocked at how different their proposal was in terms of, you know, transparency. What I will say, Your Honor, is if there's a -- if there's an agreement to be made, you know, with Mylan, we're certainly happy to consider it, you know, and I certainly don't want to foreclose negotiations, but at the end of the day, you know, if there is an agreement, we're certainly happy to consider it. I think the fundamental

tenets of where we were before are still in place, but, you know, I certainly don't want to foreclose any opportunity.

If plaintiffs can somehow come up on an agreement with Mylan, we're happy to consider it, but they've never reached out to us and said, hey, this is where we're at with Mylan, would you guys consider it. We've never heard any -- we've never received any reach out from plaintiffs on that.

THE COURT: Mr. Greene, what would happen, or is it feasible for Teva -- you've made it a thousand percent clear on the record that there was never any agreed protocol. That couldn't be clearer what Teva's position is. So the Court understands that.

But is it feasible and could it be done for Teva to do with TAR in accordance with everything in that protocol except at the end of the day, turning over 5,000 nonresponsive documents for review. Is that something that could be done? Is it feasible?

MR. GREENE: Anything is possible, Your Honor. I think the big challenge would be, and I would have to -- actually, I probably would have to get with the vendor to determine. So I think what you're saying, Your Honor, is could we run TAR across all of the search -- all of the documents, and -- and then sort of go from there, and I think certainly anything is possible, Your Honor.

I think the issue is sort of twofold. Would it

require additional training of the system and how long would that take, and sort of the -- sort of the burden associated with that, and then, two, what the timeframe associated with that is.

So with Your Honor's indulgence, if I could have a day to try to figure that out to answer that question for you, I just don't know the answer, and I would love to be able to say, yes, we can do that. What I'd like to do, Your Honor, because I know we're mindful of the -- I know we're mindful of the discovery deadlines in this case, and I want to be realistic in sort of Court expectations, if we can do it within X period of time without extraordinary burden, I would say yes.

I just need to know those two -- those two data points, which is, how long would it take, Number 1, and what would the burden on Teva be, because if we have to go through that process, it's certainly possible that we're going to spend $2 million to do it, I would say we're right back where we started. So, Your Honor, if you could give us a day or two to figure this out, that would be most appreciated.

THE COURT: You don't have to worry about the deadline to produce, quote unquote, nonresponsive documents because the Court stayed that deadline. So that's all we're talking about with regard to this argument. So that really shouldn't be a concern of Teva.

Here's what I'm going to do, because this is obviously a very important issue and I want to make sure the parties have a full and complete opportunity to be heard on anything they want to be heard.

So the Court will accept any additional letter briefs or submissions the parties want to make within one week. Please try and keep them as short as possible. You have my assurances that you're going to get a prompt decision on this. It's not going to linger. I know the issue. I know you said, Mr. Greene, you want an opportunity to submit additional case law, that's fine. Plaintiffs can do it if they want to do it.

You want to look into this issue about this other protocol, that's fine, too. And probably very soon after a week, you'll get the Court's ruling.

So I just want to thank counsel for their robust submissions and arguments. It was excellent, complete, I understand the parties' positions and if there's nothing else, we can adjourn this call. I'll enter an order about the additional week and confirm in an order what we've discussed earlier this afternoon.

Anything else anybody wants to address before we adjourn?

MR. SLATER: Yes, Your Honor, it's Adam Slater. I have a little bit of a concern about an open-ended brief. I was going to suggest that, can we limit the briefs to five

pages. I really don't -- I'm concerned that, you know, we don't feel like we have a lot to add and I always respect when you say last words. So there's a lot that you heard just now that I could probably respond to in less than five minutes but I'm not going to do it because I don't want to violate the last word rule. I would love to violate it but I'm not going to unless you say go ahead.

But I'm concerned about an open-ended brief where you're going to get a whole slew of cases, we're not going to have a chance, you know, to comment on or anything, and I don't know what else is going to be in there because there were a few things that I just heard that basically differ from our understanding of what actually occurred, you know, and we can address those things in the letter if that's how you prefer to handle it, but really advocate for a much shorter brief, maybe even three pages.

MR. GREENE: I would say ten pages would be fine for us.

MR. SLATER: I'm sorry, I know I paused, so I just apologize. The other issue is, the idea that they can implement this new protocol, this came up after I had stopped talking, so hopefully, there's a point of parliamentary procedure on that one, to quote Animal House, that -- I think that to implement this protocol, it's going to take a long time because basically, we'd have to go back to the drawing

board and give us supports and have interaction throughout the rolling productions, so I just wanted to just point that out.

And the other thing, and this is basically was my greatest concern, because counsel mentioned at the end, our talks at Mylan. We don't want this to be tethered together. It's two completely different contexts, and, you know, I don't want to be in a situation where Teva is essentially leaning into the room and influencing those conversations. I'm sure Mylan wouldn't want that either. So I want to just point that out because, you know, we want to act in good faith, but we don't see these two as being linked because the circumstances are very, very different. And again, you know, we think that this application has been filed, it should be decided.

THE COURT: Okay. Let's make it ten pages and that should be enough time, and that will be it.

Counsel, I want to thank you again. It's been a long afternoon, but I think we can adjourn. I especially want to thank the court reporter, who under difficult circumstances, does her usual great job. So, thank you very much, everybody. We're adjourned.

RESPONSE: Thank you, Your Honor.

(5:45 p.m.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/S/ Karen Friedlander, CRR, RMR
Court Reporter/Transcriber

November 12, 2020
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